No. 14-571

Supreme Court, U.S.
FILED
FEB 27 2015
OFFICE OF THE CLERK

In The
Supreme Court of the United States

APRIL DEBOER, *et al.*,

Petitioners,

v.

RICHARD SNYDER, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed November 14, 2014
Certiorari Granted January 16, 2015

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Appendix A United States Court of Appeals, Sixth Circuit, Opinion and Dissent in 14-1341; 14-3057; 14-3464; 14-5291; 14-5297; 14-5818 Issued November 6, 2014..... 1a-102a

Appendix B United States District Court, Eastern District of Michigan, Southern Division, Findings of Fact and Conclusions of Law in 2:12-CV-10285 Issued March 21, 2014 ..... 103a-139a

Appendix C United States District Court, Eastern District of Michigan, Southern Division, Judgment in 2:12-CV-10285 Issued March 21, 2014..... 140a-141a

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U.S. District Court
Eastern District of Michigan (Detroit)
CIVIL DOCKET FOR
CASE #: 2:12-cv-10285-BAF-MJH

DeBoer et al v. Snyder et al
Assigned to: District Judge Bernard A. Friedman
Referred to: Magistrate Judge Michael J. Hluchaniuk
Case in other court: U.S. Court of Appeals – Sixth Circuit, 14-01341
Cause: 42:1983 Civil Rights Act

Date Filed: 01/23/2012
Date Terminated: 03/21/2014
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
01/23/2012	1	COMPLAINT *for Declaratory and Injunctive Relief* filed by All Plaintiffs against All Defendants. Plaintiff requests summons issued. Receipt No: 0645-3349176 – Fee: $ 350. County of 1st Plaintiff: Oakland – County Where Action Arose: Oakland – County of 1st Defendant: Washtenaw. [Previously dismissed case: No] [Possible companion case(s): United States District Court for the Eastern District of Michigan, Southern Division, 12-cv-10038, Judge David Lawson] (Stanyar, Carole) (Entered: 01/23/2012)

02/17/2012	14	MOTION to Dismiss by All Defendants. (Potchen, Joseph) (Entered: 02/17/2012)
03/19/2012	25	MOTION for Summary Judgment, *Brief in Support* by All Plaintiffs. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1. Declaration of April DeBoer, # 3 Exhibit 2. Declaration of Jayne Rowse, # 4 Exhibit 3. Declaration of Wendy DeBoer, # 5 Exhibit 4. Declaration of Cynthia Bostwick, # 6 Exhibit 5. Declaration of Kathi Nelson, # 7 Exhibit 6. Declaration of Jeanne Howard, Ph.D., # 8 Exhibit 6a. Position Statement, American Psychiatric Association, Adoption and Co-Parenting of Children by Same-Sex Couples (2002), # 9 Exhibit 6b. Curriculum Vitae, Jeanne Howard) (Stanyar, Carole) (Entered: 03/19/2012)
04/02/2012	29	REPLY to Response re 14 MOTION to Dismiss filed by All Defendants. (Potchen, Joseph) (Entered: 04/02/2012)
09/07/2012	33	MOTION for Leave to File *First Amended Complaint for Declaratory and Injunctive Relief* by All Plaintiffs. (Attachments: # 1 Exhibit Exhibit A, Amended Complaint for Declaratory and Injunctive Relief) (Stanyar, Carole) (Entered: 09/07/2012)

09/21/2012	35	RESPONSE to 33 MOTION for Leave to File *First* Amended Complaint for Declaratory and Injunctive Relief filed by All Defendants. (Potchen, Joseph) (Entered: 09/21/2012)
9/24/2012	36	ORDER granting 33 Motion for Leave to File; denying as moot 14 Motion to Dismiss; and denying as moot 25 Motion for Summary Judgment. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 09/24/2012)
10/03/2012	38	AMENDED COMPLAINT filed by All Plaintiffs against All Defendants. NEW PARTIES ADDED. (Stanyar, Carole) (Entered: 10/03/2012)
11/07/2012	44	MOTION to Dismiss by Bill Schuette, Richard Snyder. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Attachment 1, # 3 Exhibit Attachment 2, # 4 Exhibit Attachment 3) (Potchen, Joseph) (Entered: 11/07/2012)
11/08/2012	45	MOTION to Dismiss *Amended Complaint* by Bill, Jr. Bullard. (Lerminiaux, Keith) (Entered: 11/08/2012)
12/05/2012	46	RESPONSE to 44 MOTION to Dismiss, 45 MOTION to Dismiss *Amended Complaint as to Count II, the Michigan Marriage Amendment*

		filed by All Plaintiffs. (Attachments: # 1 Exhibit Garden State Equality v Dow, 2012 WL 540608 (NJ Super L) (unpublished opinion)) (Stanyar, Carole) (Entered: 12/05/2012)
12/19/2012	47	REPLY to Response re 45 MOTION to Dismiss *Amended Complaint* filed by Bill, Jr. Bullard. (Lerminiaux, Keith) (Entered: 12/19/2012)
12/20/2012	48	REPLY re: 44 by Bill Schuette, Richard Snyder. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exhibit 1, # 3 Exhibit Exhibit 2) (Potchen, Joseph) Modified on 12/21/2012 (TMcg). (Entered: 12/20/2012)
02/20/2013	53	SUPPLEMENTAL BRIEF re 46 Response to Motion, 25 MOTION for Summary Judgment, *Brief in Support Plaintiffs' Memorandum of Law Regarding Recent Amendment to MCLA §710.24* filed by All Plaintiffs. (Stanyar, Carole) (Entered: 02/20/2013)
03/07/2012		Minute Entry – Motion Hearing held on 3/7/2013 re: 44 MOTION to Dismiss filed by Richard Snyder, Bill Schuette before District Judge Bernard A. Friedman. Disposition: Taken Under Advisement. Decision stayed.(Court Reporter Joan Morgan) (MWil) (Entered: 03/07/2013)

07/01/2013	54	OPINION AND ORDER denying 44 Motion to Dismiss the amended complaint. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 07/01/2013)
07/01/2013		Set Hearings: **Status/Scheduling Conference set for 7/10/2013 03:00 PM before District Judge Bernard A. Friedman** (CMul) (Entered: 07/01/2013)
07/22/2013	60	ANSWER to Amended Complaint *for Declaratory and Injunctive Relief* by Bill Schuette, Richard Snyder. (Heyse, Kristin) (Entered: 07/22/2013)
07/23/2013	61	ANSWER to Amended Complaint *for Declaratory and Injunctive Relief* by Lisa Brown. (Johnson, Andrea) (Entered: 07/23/2013)
08/14/2013	67	Cross MOTION for Summary Judgment *as to Counts I and II* by All Plaintiffs. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1. Declaration of April DeBoer, 3/9/12, # 3 Exhibit 2. Declaration of Jayne Rowse, 3/10/12, # 4 Exhibit 3. Declaration of Wendy DeBoer, 3/9/12, # 5 Exhibit 4. Declaration of Cynthia Bostwick, 3/12/12, # 6 Exhibit 5. Declaration of Kathi Nelson, 3/12/12, # 7 Exhibit 6. Declaration of Jeanne Howard, 2/12/12, with attachments, # 8 Exhibit 6(a)

		Position Statement of the American Psychiatric Association, Adoption and Co-Parenting of Children by Same-Sex Couples, # 9 Exhibit 6(b) Curriculum Vitae of Jeanne Howard, Ph.D.) (Stanyar, Carole) (Entered: 08/14/2013)
08/14/2013	68	MOTION for Summary Judgment *In Support of Plaintiffs* by Lisa Brown. (Attachments: # 1 Index of Exhibits Index of Exhibits, # 2 Exhibit Exh 1 Oath of Office, # 3 Exhibit Exh 2 Michigan House Journal, # 4 Exhibit Exh 3 Legislative Analysis, # 5 Exhibit Exh 4 BLAG Brief) (Johnson, Andrea) Modified on 8/15/2013 (DWor). [DOCUMENT ENTITLED "DEFENDANT BROWN'S BRIEF IN SUPPORT OF SUMMARY JUDGMENT FOR PLAINTIFFS"] (Entered: 08/14/2013)
08/14/2013	69	MOTION for Summary Judgment by Bill Schuette, Richard Snyder. (Attachments: # 1 Document Continuation Brief in Support) (Heyse, Kristin) (Entered: 08/14/2013)
09/09/2013	74	RESPONSE to 67 Cross MOTION for Summary Judgment *as to Counts I and II* filed by Bill Schuette, Richard Snyder. (Attachments: # I Exhibit) (Heyse, Kristin) (Entered: 09/09/2013)

09/09/2013	75	RESPONSE to 68 MOTION for Summary Judgment *In Support of Plaintiffs DEFENDANT BROWN'S* filed by Lisa Brown. (Rivers, Beth) (Entered: 09/09/2013)
09/09/2013	76	RESPONSE to 69 MOTION for Summary Judgment filed by April DeBoer, J.D.-R, N.D.-R, R.D.-R, Jayne Rowse. (Attachments: # 1 Index of Exhibits, # 2 Exhibit Exhibit A, Brief of Amicus Curiae of American Sociological Association in Support of Respondent Kristin M. Perry and Respondent Edith Schlain Windsor, filed in Hollingsworth v Perry, S Ct #12-144, and United States v Windsor, S Ct #12-307, # 3 Exhibit Exhibit B, Second Declaration of Jeanne Howard, September 9, 2013, #4 Exhibit Exhibit C, M. Regnerus, Q & A With Mark Regnerus About the Background of His New Study, (2012), http://www.patheos.com/blogs/blackwhiteandgray/2012/06/q-a-with-mark-regnerus-about-the-background-of-his-new-study/, # 5 Exhibit Exhibit D, Current Preamble to Marriage from a Childs Perspective: How Does Family Structure Affect Children . . . ?, K. Moore, S. Jekielek, and C. Emig, Child Trends Research Brief) (Stanyar, Carole) (Entered: 09/09/2013)

09/17/2013	78	REPLY to Response re 67 Cross MOTION for Summary Judgment *as to Counts I and II* filed by All Plaintiffs. (Stanyar, Carole) (Entered: 09/17/2013)
09/17/2013	79	REPLY to Response re 69 MOTION for Summary Judgment filed by Bill Schuette, Richard Snyder. (Heyse, Kristin) (Entered: 09/17/2013)
09/17/2013	80	REPLY to Response re 68 MOTION for Summary Judgment *In Support of Plaintiffs*, 67 Cross MOTION for Summary Judgment *as to Counts I and II* filed by Lisa Brown. (Johnson, Andrea) (Entered: 09/17/2013)
09/25/2013	81	NOTICE by All Plaintiffs *Notice of Filing Exhibit in Support of Plaintiffs' Motion for Summary Judgment* (Attachments: # 1 Index of Exhibits, # 2 Exhibit Excerpts of Deposition of Loren Marks, 10/30/09, filed in Perry v Schwarzenegger, N.D.Cal. No 10-16696,11/1/10) (Stanyar, Carole) (Entered: 09/25/2013)
10/02/2013	82	MOTION for Order *to Realign the Parties* by Bill Schuette, Richard Snyder. (Heyse, Kristin) (Entered: 10/02/2013)
10/08/2013	84	RESPONSE to 82 MOTION for Order *to Realign the Parties* filed by All Plaintiffs. (Mogill, Kenneth) (Entered: 10/08/2013)

10/11/2013	87	REPLY to Response re 82 MOTION for Order *to Realign the Parties Corrected to Remove Error Messages on page 1* filed by Bill Schuette, Richard Snyder. (Heyse, Kristin) (Entered: 10/11/2013)
10/11/2013	88	RESPONSE to 82 MOTION for Order *to Realign the Parties* filed by Lisa Brown. (Johnson, Andrea) (Entered: 10/11/2013)
10/16/2013		Minute Entry for proceedings held before District Judge Bernard A. Friedman: Motion Hearing held on 10/16/2013 re 68 MOTION for Summary Judgment *In Support of Plaintiffs* filed by Lisa Brown, 69 MOTION for Summary Judgment filed by Richard Snyder, Bill Schuette, 67 Cross MOTION for Summary Judgment filed by Jayne Rowse, R.D.-R, N.D.-R, J.D.-R, April DeBoer (Court Reporter Joan Morgan) (CMul) (Entered: 10/16/2013)
10/16/2013	89	OPINION AND ORDER denying 67 Motion for Summary Judgment and denying 69 Motion for Summary Judgment. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 10/16/2013)
11/24/2013	100	MOTION to Bifurcate *Proceedings Relating to Presentation of Testimony on Equal Protection Heightened Scrutiny Based on Suspect or*

Quasi-Suspect Class by All Plaintiffs. (Stanyar, Carole) (Entered: 11/24/2013)

12/04/2013 103 ORDER denying 82 Motion for Order to realign. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 12/04/2013)

12/11/2013 104 RESPONSE to 100 MOTION to Bifurcate *Proceedings Relating to Presentation of Testimony on Equal Protection Heightened Scrutiny Based on Suspect or Quasi-Suspect Class* filed by Bill Schuette, Richard Snyder. (Attachments: # 1 Exhibit, # 2 Exhibit) (Heyse, Kristin) (Entered: 12/11/2013)

01/03/2014 105 ORDER granting 100 Motion to Bifurcate. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 01/03/2014)

02/04/2014 114 MOTION in Limine *to Disqualify and Exclude Vivek S. Sankaran, J.D.* by Bill Schuette, Richard Snyder. (Attachments: # 1 Brief in Support of Motion, # 2 Exhibit Exhibit A to Brief, # 3 Exhibit Exhibit B to Brief) (Heyse, Kristin) (Entered: 02/04/2014)

02/04/2014 115 MOTION in Limine to *Exclude References to Second-Parent Adoptions and to Exclude Witnesses* by Bill Schuette, Richard Snyder. (Attachments: # 1 Brief in Support

of Motion, # 2 Exhibit Exhibit A to Brief, # 3 Exhibit Exhibit B to Brief) (Heyse, Kristin) (Entered: 02/04/2014)

02/05/2014 116 MOTION in Limine *to Exclude Proposed "Expert" Testimony of Dr. Mark Regnerus under Daubert* by All Plaintiffs. (Attachments: # 1 Index of Exhibits in support of Regnerus Daubert motion, # 2 Exhibit Mark Regnerus, deposition transcript excerpts, 1/8/14, # 3 Exhibit Mark Regnerus, expert witness report, 12/20/13, Dep. Ex. 1, # 4 Exhibit Regnerus, Findings from the National Family Structure Study, 3/2012, Dep. Ex. 5, # 5 Exhibit Regnerus, NFSS, Additional Analyses, 8/15/12, Dep. Ex. 6, # 6 Exhibit Paul Amato, Reviewing Regnerus, 7/20/13, Dep. Ex. 9, # 7 Exhibit Brief of Amicus Curiae of American Sociological Association filed in Hollingsworth v Perry, U.S.S.Ct. No. 12-144, # 8 Exhibit E-mails between Luis Tellez, Brad Wilcox and Mark Regnerus, 9/21/10, Dep. Ex. 11, # 9 Exhibit E-mails between Regnerus and Paul Amato, Dep. Ex. 13, # 10 Exhibit Request for Funding for NFSS, University of Texas at Austin, 4/15/11, Dep. Ex. 14) (Stanyar, Carole) (Entered: 02/05/2014)

02/05/2014	117	MOTION in Limine *to Bar Testimony of State Defendants' Proposed Expert Sherif Girgis Under Daubert* by All Plaintiffs. (Attachments: # 1 Exhibit Sherif Girgis, deposition transcript excerpts, 1/18/14) (Stanyar, Carole) (Entered: 02/05/2014)
02/05/2014	118	MOTION in Limine *to Exclude Proposed Expert Testimony of Joseph Price and Douglas Allen under Daubert* by All Plaintiffs. (Attachments: # 1 Exhibit Douglas Allen, deposition transcript excerpts, 1/18/14) (Stanyar, Carole) (Entered: 02/05/2014)
02/05/2014	119	MOTION to Strike 118 MOTION in Limine *to Exclude Proposed Expert Testimony of Joseph Price and Douglas Allen under Daubert*, 116 MOTION in Limine *to Exclude Proposed "Expert" Testimony of Dr. Mark Regnerus under Daubert*, H7 MOTION in Limine *to Bar Testimony of State Defendants' Proposed Expert Sherif Girgis Under Daubert* by Bill Schuette, Richard Snyder. (Potchen, Joseph) (Entered: 02/05/2014)
02/06/2014	125	EXHIBIT *Supplemental Exhibits to Plaintiffs Motion To Bar Testimony Of State Defendant's Proposed Experts Allen and Price* re 118 MOTION in Limine *to Exclude*

		Proposed Expert Testimony of Joseph Price and Douglas Allen under Daubert by All Plaintiffs (Attachments: # 1 Exhibit, #2. Exhibit, # 3 Exhibit) (Nessel, Dana) (Entered: 02/06/2014)
02/10/2014	127	ORDER denying 119 Motion to Strike; terminating 123 Motion to Extend; and granting 124 Motion to Extend. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 02/10/2014)
02/13/2014	130	RESPONSE to 115 MOTION in Limine *to Exclude References to Second-Parent Adoptions and to Exclude Witnesses George Chauncey and Nancy Cott* filed by All Plaintiffs. (Attachments: # 1 Exhibit Dr. David Brodzinsky, Expert Witness Report, 12/20/13) (Stanyar, Carole) (Entered: 02/13/2014)
02/13/2014	131	RESPONSE to 114 MOTION in Limine *to Disqualify and Exclude Vivek S. Sankaran, J.D.* filed by All Plaintiffs. (Attachments: # 1 Exhibit Sankaran Expert Report, # 2 Exhibit Sankaran CV) (Mogill, Kenneth) (Entered: 02/13/2014)

02/14/2014	133	REPLY to Response re 114 MOTION in Limine *to Disqualify and Exclude Vivek S. Sankaran, JD.* filed by Bill Schuette, Richard Snyder. (Heyse, Kristin) (Entered: 02/14/2014)
02/14/2014	134	RESPONSE to 117 MOTION in Limine *to Bar Testimony of State Defendants' Proposed Expert Sherif Girgis Under Daubert* filed by Bill Schuette, Richard Snyder. (Attachments: # 1 Index of Exhibits, # 2 Exhibit, # 3 Exhibit) (Potchen, Joseph) (Entered: 02/14/2014)
02/14/2014	135	RESPONSE to 116 MOTION in Limine *to Exclude Proposed "Expert" Testimony of Dr. Mark Regnerus under Daubert* filed by Bill Schuette, Richard Snyder. (Attachments: # 1 Index of Exhibits, # 2 Exhibit Exhibit 1, # 3 Exhibit Exhibit 2, # 4 Exhibit Exhibit 3) (Heyse, Kristin) (Entered: 02/14/2014)
02/14/2014	136	RESPONSE to 118 MOTION in Limine *to Exclude Proposed Expert Testimony of Joseph Price and Douglas Allen under Daubert* filed by Bill Schuette, Richard Snyder. (Attachments: # I Index of Exhibits, # 2 Exhibit 1 Allen Transcript, # 3 Exhibit 2 Allen CV. # 4 Exhibit 3 Allen Report, # 5 Exhibit 4 Price Report, # 6 Exhibit 5 Price

		Transcript) (Heyse, Kristin) (Entered: 02/14/2014)
02/18/2014	137	ORDER denying 114 Motion in Limine and denying 117 Motion in Limine. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 02/18/2014)
02/25/2014	138	ORDER denying 115 Motion in Limine; denying 1.16 Motion in Limine; denying 118 Motion in Limine. Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 02/25/2014)
02/25/2014		Minute Entry for proceedings held before District Judge Bernard A. Friedman: Bench Trial Begun and Continued on 2/25/2014. **Bench Trial set for 2/26/2014 09:00 AM before District Judge Bernard A. Friedman** (Court Reporter Joan Morgan (9-11); Christin Russell (11-1); Larry Przybysz (2-5)) (CMul) (Entered: 02/26/2014)
02/26/2014		Minute Entry for proceedings held before District Judge Bernard A. Friedman: Bench Trial Held and Continued on 2/26/2014. **Bench Trial set for 2/27/2014 09:00 AM before District Judge Bernard A. Friedman** (Court Reporter Joan Morgan (9-11) Christin Russell (11-12:30)) (CMul) (Entered: 02/26/2014)

02/27/2014	Minute Entry for proceedings held before District Judge Bernard A. Friedman: Bench Trial Held and Continued on 2/27/2014. **Bench Trial set for 2/28/2014 09:00 AM before District Judge Bernard A. Friedman** (Court Reporter Joan Morgan) (CMul) (Entered: 02/27/2014)
02/28/2014	Minute Entry for proceedings held before District Judge Bernard A. Friedman: Bench Trial Held and Continued on 2/28/2014. **Bench Trial set for 3/3/2014 09:00 AM before District Judge Bernard A. Friedman** (Court Reporter Christin Russell) (CMul) (Entered: 03/03/2014)
03/03/2014	Minute Entry for proceedings held before District Judge Bernard A. Friedman: Bench Trial Held and Continued on 3/3/2014. **Bench Trial set for 3/4/2014 09:00 AM. before District Judge Bernard A. Friedman** (Court Reporter Joan Morgan (9-10); Christin Russell (10-11); Larry Przybysz (1-4:30)) (CMul) (Entered:. 03/04/2014)
03/04/2014	Minute Entry for proceedings held before District Judge Bernard A. Friedman: Bench Trial Held and Continued on 3/4/2014. **Bench Trial set for 3/5/2014 09:00 AM before District Judge Bernard**

		A. Friedman (Court Reporter Joan Morgan (9-11), Christin Russell (11-12), Larry Przybysz (1-5)) (CMul) (Entered: 03/05/2014)
03/05/2014		Minute Entry for proceedings held before District Judge Bernard A. Friedman: Bench Trial Held and Continued on 3/5/2014. **Bench Trial set for 3/6/2014 09:00 AM before District Judge Bernard A. Friedman** (Court Reporter Christin Russell (9-12), Larry Przybysz (1-5)) (CMul) (Entered: 03/06/2014)
03/06/2014		Minute Entry for proceedings held before District Judge Bernard A. Friedman: Bench Trial Held and Continued on 3/6/2014. **Bench Trial set for 3/7/2014 10:00 AM before District Judge Bernard A. Friedman** (Court Reporter Joan Morgan (9-1)) (CMul) (Entered: 03/06/2014)
03/07/2014		Minute Entry for proceedings held before District Judge Bernard A. Friedman: Bench Trial Held and Completed on 3/7/2014. Disposition: Taken Under Advisement(Court Reporter Joan Morgan) (CMul) (Entered: 03/07/2014)
03/10/2014	139	Proposed Findings of Fact by All Plaintiffs (Stanyar, Carole) (Entered: 03/10/2014)

03/10/2014	140	NOTICE by Bill Schuette, Richard Snyder *State Defendants' Proposed Conclusions of Law* (Heyse, Kristin) (Entered: 03/10/2014)
03/10/2014	141	Proposed Findings of Fact by Bill Schuette, Richard Snyder (Heyse, Kristin) (Entered: 03/10/2014)
03/10/2014	142	NOTICE by Bill Schuette, Richard Snyder **State Defendants' Closing Brief** (Heyse, Kristin) (Entered: 03/10/2014)
03/21/2014	151	FINDINGS OF FACT AND CONCLUSIONS OF LAW Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 03/21/2014)
3/21/2014	152	JUDGMENT in favor of Plaintiffs against Defendants Signed by District Judge Bernard A. Friedman. (CMul) (Entered: 03/21/2014)
03/21/2014	153	NOTICE OF APPEAL by Bill Schuette, Richard Snyder re 152 Judgment, 151 Memorandum Opinion & Order. Receipt No: 0645-4559116 – Fee: $ 505 – Fee Status: Fee Paid. (Heyse, Kristin) (Entered: 03/21/2014)
3/22/2014	156	ORDER from U.S. Court of Appeals – Sixth Circuit re 153 Notice of Appeal filed by Richard Snyder, Bill Schuette [Appeal Case Number 14-1341] (KKra) (Entered: 03/25/2014)

03/25/2014	162	ORDER from U.S. Court of Appeals – Sixth Circuit re 153 Notice of Appeal filed by Richard Snyder, Bill Schuette [Appeal Case Number 14-1341] (KKra) (Entered: 04/02/2014)
05/09/2014	168	NOTICE by All Plaintiffs *of Filing Trial Exhibit 53, Stipulated Facts Regarding Plaintiffs* (Attachments: # 1 Exhibit Stipulated Facts Regarding Plaintiffs) (Stanyar, Carole) (Entered: 05/09/2014)
05/09/2014	169	NOTICE by All Plaintiffs *of Filing Trial Exhibit 51, Expert Report of George Chauncy, PhD* (Attachments: # 1 Exhibit George Chauncey, PhD, Expert Witness Report) (Stanyar, Carole) (Entered: 05/09/2014)
05/09/2014	170	NOTICE by All Plaintiffs *of Filing of Plaintiffs' Exhibit 50, MDCR Report* (Attachments: # 1 Exhibit Michigan Department of Civil Rights Report on LGBT Inclusion Under Michigan Law, 1/28/13) (Stanyar, Carole) (Entered: 05/09/2014)
05/09/2014	171	NOTICE by All Plaintiffs *of filing Trial Exhibit 100, Expert Witness Report of Dr. David Brodzinsky* (Attachments: # 1 Exhibit Expert Witness Report of Dr. David Brodzinsky, 12/20/13) (Stanyar, Carole) (Entered: 05/09/2014)

06/02/2014	172	NOTICE by All Plaintiffs *of filing Trial Exhibit, Expert Witness Report of Professor Nancy Cott* (Attachments: # 1 Exhibit Expert Witness Report of Professor Nancy Cott, 12/19/13) (Stanyar, Carole) (Entered: 06/02/2014)
01/20/2015	175	LETTER from the US Supreme Court granting the petition for writ of certiorari [Supreme Court Case Number: 14-571] [Court of Appeals Case Number: 14-1341] (KCla) (Entered: 01/27/2015)

General Docket
United States Court of Appeals
for the Sixth Circuit

Court of Appeals Docket #: 14-1341 **Docketed**: 03/21/2014
Nature of Suit: 3440 Civil Rights: Other **Termed**: 11/06/2014
April DeBoer, et al v. Richard Snyder, et al
Appeal From: Eastern District of Michigan at Detroit
Fee Status: fee paid

Case Type Information:
1) Civil
2) Private
3) Civil Rights

Originating Court Information:
District: 06-452 : 2:12-cv-10285
Trial Judge: Bernard A. Friedman, U.S. District Judge
Date Filed: 01/23/2012
Date Order/Judgment: 03/21/2014 **Date NOA Filed:** 03/21/2014

Prior Cases:
None

Current Cases:
None

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JANE ROWSE, individually and as parents and next friend of N.D.-R, R.d.-R and J.D.-R, minors

Plaintiff-Appellee

Carole Margaret Stanyar
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[COR LD NTC Retained]
(see above)

Kenneth Marc Mogill
Direct: 248-814-9470
[COR NTC Retained]
(see above)

03/21/2014	3	Civil Case Docketed. Notice filed by Appellants Bill Schuette and Richard Snyder. Transcript needed: n. (YH)

03/21/2014	7	Appellant MOTION filed by Mr. Aaron D. Lindstrom for Bill Schuette and Richard Snyder for EMERGENCY motion to stay district court order and motion for stay pending appeal. Certificate of service: 03/21/2014. (YH)
03/22/2014	11	ORDER filed GRANTING motion stay district court order [7] filed by Mr. Aaron D. Lindstrom until Wednesday, March 26, 2014. Entered by order of the court. (PJE)
03/25/2014	14	RESPONSE in opposition filed regarding a motion stay district court order, [7]; previously filed by Mr. Aaron D. Lindstrom in 14-1341. Response from Attorney Ms. Carole Margaret Stanyar for Appellees April DeBoer and Jane Rowse Certificate of Service:03/25/2014. (CMS)
03/25/2014	15	MOTION filed by Ms. Carole Margaret Stanyar for April DeBoer and. Jane Rowse to expedite appeal. Certificate of Service: 03/25/2014. – [Edited 03/25/2014 by CB] (CMS)
03/25/2014	17	MOTION to respond to emergency motion to stay filed by Beth M. Rivers for Defendant Lisa Brown. Certificate of Service: 03/25/2014. – [Edited 03/25/2014 by CB] (BMR)
03/25/2014	18	REPLY filed by Mr. Aaron D. Lindstrom for Bill Schuette and Richard Snyder regarding *Emergency*

		Motion for Immediate Consideration and Motion for Stay Pending Appeal. Certificate of Service: 03/25/2014. (ADL)
03/25/2014	22	ORDER filed: We GRANT Michigan's motion to stay the district court's order pending final disposition of Michigan's appeal by this court [7] filed by Mr. Aaron D. Lindstrom. We GRANT Lisa Brown's motion to respond to Michigan's stay motion [17]. John M. Rogers, Circuit Judge; Helene N. White, Circuit Judge (Dissenting) and Karen K. Caldwell, Chief District Judge. (PM)
04/04/2014	27	PETITION for initial en banc hearing filed by Mr. Aaron D. Lindstrom for Bill Schuette and Richard Snyder. Certificate of Service: 04/04/2014. (ADL)
04/11/2014	31	RESPONSE in opposition filed regarding a petition for initial en banc hearing, [21]; previously filed by Mr. Aaron D. Lindstrom in 14-1341. Response from Attorney Mr. Kenneth Marc Mogill for Appellees April DeBoer and Jane Rowse Certificate of Service:04/11/2014. (KMM)
04/28/2014	42	ORDER filed denying petition for initial en banc hearing [27] filed by Mr. Aaron D. Lindstrom. Entered by order of the court. (BLH)

05/07/2014	46	APPELLANT BRIEF filed by Mr. Aaron D. Lindstrom for Bill Schuette and Richard Snyder. Certificate of Service:05/07/2014. Argument Request: requested. (ADL)
05/13/2014	54	AMICUS BRIEF filed by Mr. James R. Wierenga for Michigan Family Forum. Certificate of Service: 05/13/2014. (NO MOTION REQUIRED, BLANKET CONSENT) – [Edited 05/14/2014 by CB] (JRW)
05/13/2014	55	AMICUS BRIEF filed by Mr. Eric C. Rassbach for The Becket Fund for Religious Liberty. Certificate of Service:05/13/2014. (NO MOTION REQUIRED, BLANKET CONSENT) – [Edited 05/14/2014 by CB] (ECR)
05/14/2014	65	AMICUS BRIEF filed by Mr. Thomas J. Rheaume, Jr. for Michigan Catholic Conference. Certificate of Service:05/14/2014. (TJR)
05/14/2014	73	AMICUS BRIEF filed by Mr. Lawrence J. Joseph for Eagle Forum Education & Legal Defense Fund. Certificate of Service:05/14/2014. (LJJ)
05/14/2014	75	AMICUS APPEARANCE filed by Attorney Mr. Thomas Molnar Fisher for Amici Curiae AZ, LA, IN, MT, AK, CO, SC, UT, ID, AL and SD. (LAJ)
05/14/2014	82	AMICUS BRIEF filed by Alexander Dushku for National Association of

		Evangelicals, Ethics & Religious Liberty Commission of The Southern Baptist Convention, U.S. Conference of Catholic Bishops, Lutheran Church-Missouri Synod and Church of Jesus Christ of Latter-Day Saints Copies:1. Certificate of Service:05/14/2014. (CB)
5/15/2014	74	CORRECTED AMICUS BRIEF filed by Coalition of Black Pastors filed by Ms. Erin Elizabeth Mersino for Coalition of Black Pastors. Certificate of Service:05/15.2014. Argument Request: waived. (EEM)
06/09/2014	91	APPELLEE BRIEF filed by Ms. Carole Margaret Stanyar for April DeBoer and Jane Rowse. Certificate of Service:06/09/2014. Argument Request: requested. (CMS)
06/16/2014	108	AMICUS BRIEF filed by *American Psychological Association, American Academy of Pediatrics, American Psychiatric Association, National Association of Social Workers, and Kentucky Psychological Association.* Certificate of Service:06/16/2014. (PMS)
06/16/2014	125	AMICUS BRIEF filed by *Alan M. Gershel for Michigan Law Professors.* Certificate of Service:06/16/2014. (AMG)
06/16/2014	134	AMICUS BRIEF filed by Mr. Paul R.Q. Wolfson for Gay & Lesbian

Advocates & Defenders. Certificate of Service:06/16/2014. (PRW)

06/16/2014 137 AMICUS BRIEF filed by *Diane M. Soubly Constitutional Law Scholars A Bhagwat, L Bollinger, E Chemerinsky, W Dellinger, M Dorf, L Epstein, D Farber, B Friedman, E Katz, J Jeffries, Jr., L Lessig, W Marshall, F Michelman, J Schacter, S Sherry, G Stone, D Strauss, W VanAlystyne.* Certificate of Service:06/16/2014. (DMS)

06/16/2014 141 AMICUS BRIEF filed by *Carmine D. Boccuzzi, Jr. for American Sociological Association.* Certificate of Service:06/16/2014. (CDB)

06/16/2014 154 AMICUS BRIEF filed by *Law Enforcement Officers and Organizations.* Certificate of Service:06/16/2014. (SAJ)

06/16/2014 157 AMICUS BRIEF filed by Mr. Benjamin G. Shatz for Howard University School of Law Civil Rights Clinic, Gary J. Gates, Williams Institute and UCLA School of Law *counsel* for *amicus curiae Prof. Gary J. Gates, Williams Institute, UCLA School of Law.* Certificate of Service:06/16/2014. (BGS)

06/26/2014 173 REPLY BRIEF filed by Attorney Mr. Aaron D. Lindstrom for Appellants Bill Schuette and

		Richard Snyder. Certificate of Service:06/26/2014. (ADL)
11/06/2014	184	OPINION and JUDGMENT filed: The judgment of the district court is REVERSED. Decision for publication. Martha Craig Daughtrey (DISSENTING) Jeffrey S. Sutton (AUTHORING), and Deborah L. Cook, Circuit Judges. (CL)
11/20/2014	185	U.S. Supreme Court notice filed regarding a petition for a writ of certiorari filed by Appellee April DeBoer. Supreme Court Case No:14-571, 11/14/2014. (CL)
01/20/2015	186	U.S. Supreme Court letter filed granting the petition for a writ of certiorari [185], limited to the following questions: 1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex? 2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state? Supreme Court Case No: 14-571, 01/20/2015.. (CL)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs,

-v-

RICHARD SNYDER, ET. AL.,

Defendants. /

Case Number: 12-10285

VOLUME 1 – AM SESSION

BENCH TRIAL
BEFORE THE HONORABLE
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
TUESDAY, FEBRUARY 25, 2014

APPEARANCES:

For the Plaintiffs:	**Leslie Cooper, Esq.** **Carole M. Stanyar, Esq.** **Dana M. Nessel, Esq.** **Kenneth Mogill, Esq.** **Robert Sedler, Esq.** **Vicki L. Henry, Esq.**
For the Defendants: Richard Snyder, Bill Schuette,	**Tonya C. Jeter, Esq.** **Kristin M. Heyse, Esq.** **Joseph E. Potchen, Esq.** **Michelle Brya, Esq.**

Lisa Brown

Beth M. Rivers, Esq.
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* * *

[68] BY MS. STANYAR:

Q. I believe that you were talking about the term "child adjustment."

A. Yes. It has to do with the child's ability to function well within the normal range in one or more areas of life. For example, is the child progressing normally, motorically. Is the child developing normal attachments with parents and with others. Is the child progressing through school, doing well in reading, math, etc., etc., forming appropriate peer relationships, developing positive self-esteem and, you know, integrating sense of self in terms of identity appropriately. [69] So there are many areas of development that we look at in terms of adjustment.

Q. In the field of psychology, has there been research conducted to learn what family circumstances promote positive child adjustment?

[David Brodzinsky, Ph.D.] A. Yes. There's a tremendous amount of research.

Q. How is child adjustment measured?

A. Well, it's measured in a variety of ways. We, we look at quality of parent-child relationships, we look at symptomatology of a child, the behavior of the child, whether the child shows any evidence of any type of problematic behavior, progress in school, peer relationships and so forth. And we do so with, we do so with, in a variety of ways, too, different methods they used.

Q. All right. Has researched identified any factors relating to family circumstances that predict positive adjustment?

A. Yes.

Q. I'm going to ask you to look at the demonstrative here. Can you tell us, are these the factors?

A. These are the primary factors that have been, time and again, shown to be the key predictors of children's adjustment.

They are quality of parent-child relationships; quality of the relationships between the parents. Harmonious parents produce better adjusted children. Warmer parent-child relationships produce better adjustment in children.

[70] The characteristics of the parent, the styles that they adopt, parental warmth and nurturance, emotional sensitivity. The ability to employ age appropriate rules and structure for the child.

And the kinds of educational opportunities that children are afforded is important, as well as the

resources that are provided for the child, not only in the family itself, but the resources that, from the outside, that impact the family and the child in particular. And of course, the mental health of, of the parents.

* * *

BY MS. STANYAR:

Q. Have studies looked at whether these factors predict positive outcomes or positive child adjustment in families other than married mother/father biological-parent families?

A. Yes. These are the predictors that, the key predictors that predict child outcome regardless of the family form, whether it's a two-parent married family, heterosexual, gay or lesbian families, single parents, divorced families, families of color, families from low SES status, that's socioeconomic [71] status or, you know, middle or upper socioeconomic status. All families, these are the key predictors.

Q. Have they all been studied?

A. They've all been studied, yes.

Q. How well established in the field of psychology is it that these factors that you listed are the factors that predict positive child adjustment, regardless of family types?

A. It's very well established. The consensus in the child development and family psychology literature is that these are the factors that predict, you can

open up any journal that's studying this, and you'll see one or more of these represented.

MS. STANYAR: All right. I'm going to ask him to look at Tab A of his binder. And here's where we're getting into the point at which I'm going to lay a foundation for the articles. And I think there's going to be an objection here, but.

THE COURT: Okay.

BY MS. STANYAR:

Q. All right. Look at Tab A of your binder. Tab A.

A. I've got it.

Q. Yeah.

A. This is Tab A.

Q. First of all, could you identify the studies?

A. These are two articles. They are not empirical studies, they are review articles, one by Michael Lamb that is entitled, [72] "Mothers, Fathers, Families and Circumstances: Factors Affecting Children's Adjustment." It's a recent publication.

And the second is a chapter by Susan Golombok and Fiona Tasker, which reviews social emotional development in different types of families, particularly non-traditional family forms.

Q. Do these articles summarize the body of research on the factors that affect child adjustment?

A. Yes, they do.

Q. Are they representative of similar reviews of this nature?

A. They are.

MS. STANYAR: At this time, I would move to admit the literature, these two.

THE COURT: Counsel?

MR. POTCHEN: Yes, your Honor. We're going to object to, we'll start with these that we're objecting to.

This, apparently these are summary articles done by people other than this witness. So these are summaries of the research conducted by other people. That's hearsay on top of hearsay. So this is not a summary even done by this witness. And it is not a summary of even the people who are writing the article.

So to the extent they are seeking to admit this, there is no hearsay objection that would follow that this would be admissible.

* * *

[74] [The Court] there's no dispute at this point that he is an expert and he may render opinions in the areas that you have indicated before.

But the articles themselves would not be admissible through this particular witness. And that doesn't mean that he can't rely on them and talk

about them in terms of putting his opinion together. But I don't think the articles themselves, not think, I know they aren't and, therefore, I'll sustain the objection.

* * *

BY MS. STANYAR:

Q. Is there research on the ways in which men and women parent [75] children in heterosexual couple families?

A. Yes, there are.

Q. What does the research indicate?

A. The research indicate there's a wide range of variability between, for men and women, in how they parent. There's variability. There's more overlap than difference. There's variability from family-to-family. There's variability even within the same family, depending upon whether you're parenting a baby versus parenting a teenager. You would certainly, either gender would parent the child differently. And there's variability in how men and women parent from culture to culture, as well.

Q. Does, does the research show any average differences in the ways that mothers and fathers interact with their children?

A. Yes, it does, on average.

Q. Can you describe that?

A. Sure. Mothers tend to be more emotion focused. They tend to be more calming and soothing with their children, with more physical affection offered. They are more linguistically oriented.

Fathers, in turn, are more playful, more boisterous in their, in their interactions. They are a little bit more task-oriented in their interactions.

But I would say that both men and women do the same kinds of things; in other words, they can engage in the same [76] kind of behavior. It's a matter of distribution of different behavior at different times, depending upon children's needs and who is available for the child.

Q. Does the study of psychology consider these differences in competency?

A. No. They are differences in style, not at competence.

Q. Are women more likely to be more skilled at parenting?

A. On average they probably are, because they spend more time. And the more experience you have, the more skilled you become in particular areas.

So women are, on average, more likely to be the primary child care provider, more likely to feed and bathe the child, more likely to take the child to different places, spend more time with the child, and with time comes competence.

We know that when men spend more time, such as we're finding a trend, you know, in terms of societal trends, men spending more time being parents, and in some cases, men being the primary care provider, we find that the same level of competence occurs generally in men who are spending more time. They look very much like what we see when women are spending primary time.

Q. What is the reason for these stylistic differences?

A. Well, there's a couple of reasons. One is that it depends on what role the person is playing. If you are feeding the child or bathing the child, you're more directly involved with [77] the child. You're engaging more soothing behavior. You're engaging more face-to-face interactions with the child. The role elicits certain kinds of behavior. So the role that people play, that they choose to play, that they negotiate between themselves in terms of playing often elicits different kinds of behavior.

But also, men and women socialize differently. We socialize women, in general, in society to be more emotion-focused. We promote emotion in women and we tend to downplay the expression of emotion in men, on average of course. And men are socialized, you know, to be more physical, to be more, you know, more stoic in their emotions and so forth.

So sometimes the socialization that men and women experience growing up is brought into a

family, and it impacts on the kind of styles that they, they enact.

Q. Are you saying that only fathers engage in playful activities with their children and the mothers don't do that?

A. No, of course not. In fact, probably, in an absolute sense, probably mothers spend more time playing with their children because they spend more time with their children, period.

But in a relative distribution of time versus what activities you're engaged in, men are more playful rather than let's say in a soothing, calming sense, and women tend to spend [78] more time soothing and calming children relative to their husbands.

Q. Are these differences in parenting style uniform across couples?

A. No, they are not. There's quite, quite a difference from couple to couple in distribution of, of the roles that people play, of the kinds of interactions that they take – that take place and the kinds of behaviors that, that they manifest in doing the same role, for example.

Q. Does the research suggest that children are better off if their mothers adopt a typical maternal style and their fathers adopt a typical paternal style?

A. No. There's no research that supports that.

Q. So, for example, if in, in a particular hetero-sexual parent family, if the father happens to be more

nurturing and soothing and is less physically playful with the children, is it at all harmful to the child?

A. No, it would not be.

Q. Is there any evidence that children need a male and female parent for positive child development?

A. I assume you mean male and female in the same household?

Q. Yes.

A. The answer is no. It's not the gender of the parent that's the key. It's the quality of parenting that's being offered by whoever is there, husband or wife, two women, two men, a single [79] parent, as long as the factors that we listed up there are present: Good mental health, good parent-child relationships, what we call an authoritative parenting style, which is warmth, stimulation, structure, and the availability of resources. Then we're going to have a child who is much more likely to be healthy.

Q. Do children in single-parent families, on average, do as well as children in two-parent families?

A. No, they don't. On – well, let me start by saying they don't, but most children in single-parent families actually do well. It's just on an on-average comparison. The reason –

Q. What does that mean? Because maybe you used this is a lot.

A. Oh.

Q. But what is an on-average comparison?

A. Well, when you take a group of single parents and a group of two-parent families, we get a mean or an average of what they are doing, and how the outcome is. And there's often an overlap, there's always an overlap. And the difference between the means is what we call the on-average difference. The means could be very similar, but still statistically significant.

And most of the behaviors or the adjustments of children in single parents would look like the behaviors and adjustment of children in two-parent families. But on, excuse me, on average, the, the children in two-parent families would be doing a little bit better.

[80] Q. What accounts for the higher rate of adjustment problems, to the extent there are, in single-parent families?

A. There are a couple of reasons. First, let's talk about the pathway to single parenthood. Many parents become single parents following the break-up of a previous relationship.

Children who are the product of a previous failed relationship experience, you know, the disruption of that relationship. They frequently will experience the conflict between the parents that preceded, unfortunately too often, follows the break-up as well. So

there's a lot of turmoil in the child's life that leads the child ultimately to be raised by that single parent.

Other times, parents become single parents, you know, without the active involvement of the father. So the child is born, but the father is just not involved in the child's life.

Both of those groups also have less resources. We know that single parents are much less likely to, to be economically as advantaged as two-parent families.

And anyone who is a single parent knows, or knows a single parent, it's just more stressful. You are doing everything by yourself. So you don't have someone else to help in that regard.

Q. Would you say that most children raised in single-parent families have adjustment problems?

A. No, they don't.

[81] Q. Most?

A. Most are doing very well. You know, it's a matter of the fact that many of these, most of these single parents end up being described in very similar ways that we're talking about the factors here, there. They are mentally healthy. They have good parent relationships, they provide resources, and you know, it works well for the child.

Q. When you say children don't need a male and female parent to develop well, are you saying that moms and dads are not both important to children?

A. Of course not. Moms and dads are important. They are important as parents, though. They are not important as males or females, women and men. It's what they bring to the, to the parenting process are certain parenting qualities that we've talked about up here, again. And it's those factors, not the gender of the parent, that predicts to better outcomes.

Q. Is there a body of scientific research on same-sex parents and their children?

A. There is, quite a bit.

Q. Is that research published in peer review journals?

A. Yes, it is.

Q. Have any of the studies appeared in top tier journals?

A. Yes, they have.

Q. What is the purpose of peer review?

A. Peer review ensures, or at least it protects against a [82] study being published that has poor methodology, that is using inappropriate measures, that is doing inappropriate analyses or drawing inappropriate conclusions from those analyses, or is not integrating the findings into the body of literature in a way that makes sense.

Q. Over what period of time has this research on gay and lesbian parenting been accumulating?

A. Over 30 years now.

Q. In total, approximately how many peer reviewed articles are there addressing parent – are there addressing parenting by same-sex couples or on the adjustment of children raised by gay and lesbian parents?

A. Well over a hundred, probably getting close to 150 now.

Q. Can you say anything about the reputations of the researchers working in this area?

A. Well, there's a large number of researchers working it. But some of the top people are like Susan Golombok from Cambridge University in England, and her colleague Michael Lamb is also at Cambridge. Charlotte Patterson, at the University of Virginia, very distinguished professor. Abbie Goldberg, a younger, but very distinguished researcher at Clark University. Nanette Gartrell, who is in San Francisco, a distinguished researcher in this area. There are quite a few very distinguished people who are working in this area.

Q. I'm going to ask you to turn to Tab B.

[83] All right. Are these some samples of studies that evaluated children raised in same – in same-sex parent families?

A. Yes, they are.

Q. Okay.

A. Samples.

Q. I'm going to have you identify them. We're not admitting them, but we're identifying these studies.

A. Do you want –

Q. Yes.

A. One by one?

Q. Yes.

A. Okay. The first one is by Henny –

THE COURT: The microphone, just move it a little closer.

THE WITNESS: Oh, I'm sorry.

THE COURT: Because they are in another room listening.

THE WITNESS: Okay. The first one is by Henny Bos and his colleagues. Do you want me to read the title?

BY MS. STANYAR:

Q. I'm sorry. Read the title.

A. Yes. "Lesbian and Heterosexual Two-Parent Families: Adolescent-Parent Relationship Quality and Adolescent Well-Being."

[84] Q. Excuse me. Is Henny Bos a male or female?

A. Female.

Q. Okay. All right.

A. The second one is also by Henny Bos and her colleagues. Its entitled, "Child Adjustment in Parenting and Planned Lesbian-Parent Families."

Q. What year is that?

A. The first one is 2014. The second one is 2007.

The third article is by Raymond Chan and colleagues, including Charlotte Patterson. Raymond Chan was a student or a junior colleague of Charlotte Patterson. And it's entitled, "Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers." And that was published in 1998.

The fourth article is by Rachel Farr and colleagues. And again that's Rachel Farr was – is now a professor but was a student at Charlotte Patterson. Charlotte Patterson is a third author on this.

Q. Let me ask you, did you touch upon the Golombok/Mellish 2013 article?

A. Did I miss that one?

Q. Is that the one right before it?

A. I skipped him. I'm sorry.

So the, I guess the third article then is by Susan Golombok and colleagues, including Michael Lamb, who is also [85] probably three, third or fourth

distinguished professor of child development in the world. And this is published in Child Development. It's entitled, "Gay Adoptive Father Families: Parent-Child Relationships and Children Psychological Adjustment," 2013.

The fourth is Rachel Farr, Stephen Forssell and Charlotte Patterson, published in Applied Development Science in 2010 entitled, Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?

And the fifth is Michael Rosenfeld, Nontraditional Families and Childhood Progress Through School, published in Demography in 2010.

Q. Are these examples of studies that evaluated children raised in same-sex families?

A. Excuse me. Yes, they are.

Q. Have you, have you – are you familiar with this literature?

A. Yes, I am.

Q. Have you reviewed all of these?

A. I've reviewed these and, and many, many others.

Q. All right. And are these representative of the body of research on same-sex parents and their children?

A. Yes, they are.

Q. With the exception of, I believe it's the Bos article from 2014, and that would have been February of 2014, with the [86] exception of that article, would you have relied on these articles in forming, forming your opinions that you're going to testify to today?

A. Yes, and obviously many other studies as well.

Q. Can you describe what this body of literature evaluated in terms of parents and in terms of children?

A. The body of literature in this area evaluates both the quality of parenting afforded children who were raised by same-sex couples, versus heterosexual couples, as well as the quality of the relationships of those parents, too.

And they also measured child outcome in a variety of different ways. Child outcome will be measured probably differently from one study to another, using different measures. But generally, we're looking at psychosocial adjustment. We're looking at gender role behavior. We're looking at peer relationships. We're looking at school functioning, school progress. We're looking at behavior and symptomatology in some cases. We're looking at victimization in other cases. We're looking at conduct problems and, and related issues like illicit substance use and delinquency and so forth.

There's a wide range of variables that are measured. And these are all measured – measures – excuse me. These are all variables that are known to predict long-term adjustment difficulties.

[87] Q. Let me ask you, and you may have touched on this with the psychosocial thing. But did any studies assess children's psychological well-being?

A. Yes. Many studies do.

Q. Did any of these studies have comparison groups of heterosexual couples?

A. Yes. Most do.

Q. Did any of the studies evaluate children raised in planned same-sex parent families, in other words, families created by same-sex couples?

A. Yes, they, they do.

Q. Can you identify the studies that did that?

A. Well, there are the studies of planned lesbian families that have conceived through donor insemination. So, Charlotte Patterson's work is in this area, Henny Bos's work is in this area, Susan Golombok is in this area, and there are others.

Q. We had mentioned a Farr – Farr and Forssell?

A. Yes.

Q. Was that – would that be one that involved planned same-sex families or not?

A. I'm blocking on that. I'd have to go back and look.

Q. Did any of them involve families formed by assisted reproductive technology or the use of donor sperm?

A. Yes. The ones that I've talked about generally are, are studies of D.I. families, donor –

[88] Q. Donor insemination?

A. Donor insemination, yes.

Q. Did any of the studies evaluate children adopted by same-sex couples?

A. Yes. The Golombok, Mellish, including Michael Lamb does. The Rachel Farr and Charlotte Patterson does, and other people do as well.

Q. Do any of the studies on same-sex parents assess the well-being of adolescents or young adults?

A. Yes. Charlotte Patterson and Wainwright do. Susan Golombok does in some of her longitudinal work. Henny Bos does in the 2014 article. There are a number of studies that look at adolescents, and bordering on the adolescent/young adult period.

Q. Do we have a study assessed on children raised by gay fathers?

A. Yes.

Q. Can you identify some of the studies that evaluated gay fathers?

A. Well, the study on adoption by Susan Golombok and Mellish and Michael Lamb does, Rachel Farr and her colleagues do. Gay fathers are included in other studies as well.

Q. What are the conclusions of the body of research on same-sex parent families?

A. The conclusions are the –

[89] MR. POTCHEN: That I'll object to on hearsay, your Honor, the conclusions themselves. He can testify about the studies, but he's bringing in what their conclusions are and their opinions. Basically he's being used as a –

THE COURT: Sustained. He can testify as to what his conclusions are based upon his research and based upon his study and so forth, but not necessarily what somebody else's conclusion was, because they are not here for cross. They are not here for cross-examination.

MS. STANYAR: I'll have him answer your question.

THE COURT: No. It's your question, not mine.

BY MS. STANYAR:

Q. What is your opinion?

THE COURT: I made a ruling. My ruling is that he can't testify as to their conclusions. He can testify as to his conclusions that he reached as an expert, using all these documents.

BY MS. STANYAR:

Q. What are your conclusions based upon the research that you've reviewed?

A. My conclusions about the outcomes for children, based upon this research, is that children of gay and lesbian individuals show no discernible differences in outcomes and in general characteristics, developmental characteristics, compared to children of heterosexuals.

[90] And the other conclusion that I reach is that the parenting qualities of gays and lesbians are no different than the parenting qualities of heterosexual individuals. And the couple relationships of those who are parenting children are no different in heterosexual families and gay and lesbian families.

Q. All right. So are your, are your conclusions consistent with the findings that we talked about?

A. Yes, they are.

Q. All right. Did the studies reach any conclusion about – and it was kind of a longish answer, so

we're going to make sure we hit everything. Did the studies reach any – or no.

Is your opinion – what is your opinion about the psychological well-being of children of same-sex parents?

A. My opinion is that their adjustment is, is the same as children raised by heterosexuals.

Q. What is your opinion as to the educational development of children of same-sex parents?

A. That it's the same as those raised by heterosexuals.

Q. What is your opinion as to whether or not children of same-sex parents are able to form healthy peer relationships?

A. My opinion is that they form just as healthy peer relationships as those raised by heterosexuals.

Q. Were the factors that predicted good child adjustment of same-sex parent families any different than the factors that [91] predict adjustment in heterosexual families?

A. No. They are the same. When those – there are studies that not only address the issue of family structure, gay and lesbian versus heterosexual, but they also incorporate family process and resource variables of the sort that we're talking about here.

And to a study, every one of those studies shows that it's the family process and resource variables that predict adjustment, not family structure.

Q. And are the findings consistent?

A. They are very consistent.

Q. What methodologies have researchers employed in their studies of the adjustment of children raised by same-sex parents, in terms of, first of all, talk about recruiting samples.

A. Okay. We recruit samples in different ways. The majority of the studies are used what are called convenience samples. We, we take from the communities people who are readily, more readily available. So if I wanted to do a study on children's academic achievement, I might go to a school in a community, get permission to work with that school and the families in that, and pull from, the data from those children.

Similar kind of things are done, you know, in this area. We recruit gay and lesbian families from various sources that, without the assumption being that they are representative [92] per se of the broader population of gays and lesbians.

Q. We'll come back to that. But are there different methods of assessment within this body of research?

A. Yes. We assess in a variety of ways. We do intensive interviewing. We use structured –

Q. Interviewing of who?

A. Oh, I'm sorry. We do interviewing of, of parents, we do interviewing of children, depending upon their age of course. We do interviewing sometimes of teachers, and others that are, you know, are part of the family system.

We use structured interviews filled out by parents, by teachers sometimes, by the youth themselves, particularly in the adolescent studies that focus on adolescents.

We do observations of parents and children interacting with one another, usually around some kind of structured tasks. Some studied, Henny Bos, for example uses daily diaries that provide information about what's going on in the family.

Q. Do any use standardized testing?

A. Yes. Some use standardize testing, too.

Q. Okay. Do the studies look at subjects at one moment in time or do they look at the subjects over time?

A. Both. The first is called a cross-sectional study where you take a, a group of individuals at one point in the life, kind of a slice-of-life look at them. Studies have looked at children, you know, from very early childhood all the way [93] through adolescence that way. And there are other studies that are longitudinal that follow a child or follow families, children

and their parents, from a particular point in time, to a second or a third point in time.

Some studies have gone all the way through basically the transition to, to young adulthood now, several studies have.

Q. Are all of these methods accepted methods in the field of psychology?

A. Absolutely. Over, I was going to say you can open any top tier journal, Child Development, or Developmental Psychology, or Journal of Family Psychology, you will find all of these recruitment methods and methodologies and assessment techniques represented in one or more studies in these journals.

Q. Is convenience sampling rare in the field of psychology?

A. No. It's the bread and butter of psychology.

Q. What are the sizes of samples in those studies that use convenience samples to study children of same-sex couples?

A. It varies. It can be from a few dozen to over a hundred.

Q. How can you be confident in the results of studies that use smaller samples like convenience samples?

A. Well, it depends on what you're trying to do. If you're looking at a question of, of what is the

relationship between a variable such as family structure, what you do is you take a group of individuals. You try to control for extraneous [94] factors like, let's say, income. We know that you want to match for income, because income correlates with child adjustment. So compare one group with another, and then you replicate. You replicate it again and again. Not the exact same study. You replicate the general question. Do – does sexual orientation, in this case, does sexual orientation, does family structure make a difference in child lives.

We have now well over a hundred studies that have replicated that question, again and again, using different populations, different, in different areas of the country, in different countries.

And so the assumption is when you get a pattern, a consistent pattern over time, then the question – then the findings are valid and, and relate – that relate to the question of interest.

Q. Are you familiar with the term "statistical power"?

A. Yes.

Q. What is that?

A. Statistical power is the ability to detect a difference between two groups that represent a true difference, you know, as opposed to some random difference.

Q. And can you get sufficient statistical power with small samples in the literature?

A. Statistical power is related to sample size. And when you use small samples, sometimes you're not able to detect small [95] differences between two groups.

I would point out that even though, where we have small samples in this, in this literature, but we are regularly finding differences between groups, just not the differences perhaps that the opponents of marriage equality are looking for. We certainly find differences in parenting styles. So we can detect, at least medium and large scale differences. Sometimes we can detect small differences.

Q. Are you able to detect differences in maladjustment?

A. Generally, we can. Because the differences that were generally – the range of scores in these studies are generally all within the normal range. So that if the difference is small, they are really differences about normality, so to speak, ranges, whether a person tends to be a little bit more this way, or a little bit more this way. They are not – were not talking about differences that are, that are failing to detect gross maladjustment.

Q. When you're talking about this, this group of, this body of research, the convenience sample, is there anything about that body of research,

considered as a whole, that makes you think that it's unreliable in any way?

A. No.

Q. What is a representative sample?

A. A representative sample is a group of individuals that are drawn from a larger group that we have reason to believe that [96] they are – that they represent that larger group.

Q. What is a population study?

A. A population study is studying everyone in, you know, in a particular population, a census. Studies that have used census data or population studies because they pull from – data from everyone.

Q. Are representative or population studies commonly used by psychologist?

A. No, they are not commonly used. We do use them occasionally, but the bread and butter of developmental science and family science is, in psychology, is convenience samples.

Q. Why not use representative or these broad brush population studies?

A. Well, although there are some benefits, of course, to large samples, the problem is that the small samples allow us to look inside the family. We, when we're working with a smaller group of individuals, we observe them. We intensively interview them. It allows us to know what's going on.

Census data asks a few questions. It doesn't tell us what's going on in a family. Large scale studies seldom provide the ability, occasionally they do, but they seldom allow the ability to look intensely inside the family.

And as a developmental scientist, what we're interested in is what makes a difference in the family for the child. What are the resources that parents bring into the [97] family, in terms of parenting styles, in terms of the relationship that they have with children, in terms of their relationship if there's a couple, that makes a difference in a child's life. The only way to study that, really, is to get actively involved with the families and get up close and personal, so to speak.

Q. Is a representative or population-based standard essential to assess the well-being of either children, of children raised by same-sex parents?

A. In my opinion, no.

Q. Why not?

A. Because it doesn't ask – population studies, like census simply don't ask the questions that will allow us to assess the critical factors that are, are relevant. Census data actually doesn't even ask the very specific question of whether you're a gay or lesbian, and so we have to infer from that, from what information is available.

Q. What sort of variables do studies on gay-parent families need to control for?

A. You need to control for a wide range of factors. You need to control for the resources available. Usually, the proxy variables are parent income or parent education. You need to control for family stability.

Q. Let me stop you there. What, what does it mean to "control for" a factor?

[98] A. You either match the sample, so that children in the gay and lesbian families are matched with children in heterosexual families in terms of, so that the groups are, are the same in terms of average parent income, or average parent education, or, or the racial composition of the two groups.

We also are very concerned about family instability and family transitions, particularly in this area, but in general. We know that children who have experienced family disruption through divorce –

Q. Were going to get to that.

A. Oh, I'm sorry.

Q. Let me just try to get you back over here.

A. Okay.

Q. Are there types of research for which a representative or population-based sample is necessary?

A. Yes. If you want to know the rate of something, for example, if you want to know the rate of children who are being raised by gays and lesbians in

the country, you need a representative sample so that you can generalize to the general population.

Q. You mention that there were some studies of children or lesbian – children of lesbian or gay parents that did use population-based or representatives samples. Can you identify a study that used a representative sample?

A. Wainwright and Patterson studies, they, they published [99] three articles, same sample set, but so it's not different samples, but they used a national survey of adolescent health. I may occasionally refer to it as the ADD health survey, A-D-D. But it's an adolescent health survey. It's a survey of I think 12,000 or more representative teenagers.

This was an unusual study because they not only collected survey data, but they actually interviewed the adolescents as well, which is very unusual in large-scale data sets.

So that's, those – there are three publications from them. Rosenfeld is a, is a population study, because he used the census data.

Q. Is that Michael Rosenfeld?

A. I'm sorry. Yes. Michael Rosenfeld.

Q. Stanford University?

A. No. Yes, I'm sorry. Stanford University. I'm sorry. So those are two examples of representatives – representative samples.

Q. All right. So if you're looking at the findings of representative population-based or representative samples and the findings from convenience samples, are the findings showing up different?

A. They are not.

Q. Some of the defendants' experts the State defendants are expected to testify that only long term, large-scale [100] representative samples provide reliable data on the well-being of children of same-sex couples. What's your reaction to that?

A. I disagree completely. First of all, it makes the assumption that, that somehow, knowledge about adults only emerges in adulthood.

When you would have maladjustment in young adults or middle-aged adults, it almost always is preceded by maladjustment earlier in life. An example would be, you know, delinquency behavior in the young adult, conduct problems. Antisocial behavior is almost always preceded by problems in childhood.

The literature in development science mostly focuses on children and adolescents. We don't have studies going into adulthood or middle-age, that's true, not in this area at least. But we have really solid, reliable data on the predictors of long-term adjustment. And there is –

Q. All children? You have solid research as to the predictors of maladjustment as to all children?

A. All children. Exactly. And not just in, in the gay and lesbian literature. But, you know, the kinds of measures that are used in the, in this same-sex couple literature are the ones that are used in other developmental science and ones that we know do predict to maladjustment in young adulthood and beyond.

So we have a lot of confidence in saying if we're not [101] seeing problems in early childhood, in middle childhood, in adolescence in this group compared to heterosexuals, there is absolutely no theoretical or empirical reason to expect that we would suddenly see problems emerging when they are, you know, in their late 20's or into their 30's and so forth. Just no – it doesn't make any sense from both our theories and our data.

Q. How do you define adolescents? Up to what age?

A. Up to 18, let's say.

Q. All right. Let's go back. I don't know if you defined a longitudinal study. Have you defined it yet?

A. I think I have, but.

Q. Are any of the studies of children of lesbian and gay parents longitudinal?

A. Yes.

Q. Can you identify those?

A. Susan Golombok and Fiona Tasker followed a group of individuals from failed – who were recruited from failed heterosexual marriages. They went into the young adult period, early young adult period. Susan Golombok, in her fatherless families studies have followed children, it's a separate study, all the way now into, I think they are 17 or so, into the late adolescent years, maybe approaching young adulthood, some of them. Excuse me.

Henny Bos and his studies of D.I. families, donor insemination families, have followed the children into roughly [102] I think they are 18, 19 years of age right now.

So we have at least three or four studies that have followed children from earlier in life, in same-sex families, in comparing them to heterosexual families through the developing years into at least adolescence, if not into young adulthood, early part of young adulthood.

Q. If you take the findings of the longitudinal studies that you just talked about, and you take the findings of the other studies, the convenience sample, the representative sample studies, are the findings showing up consistent?

A. Yes, they are.

Q. Experts for the State are expected to testify that the research methods used in the studies on same-sex families are flawed, and thus, the studies are not reliable. What's your reaction to that?

A. I completely disagree. That, that conclusion essentially dismisses all of developmental, or most of developmental science and most of psychology, since most of psychology uses convenience samples.

Q. Experts for the State are expected to testify that we don't yet have sufficient research to establish policy about same-sex parents, because it's a nascent body of research. What's your reaction to that?

A. It's hardly nascent. It's 30 years or more maybe, you know, in its development with a hundred or more, maybe closing [103] in on 150 studies right now.

Q. One of the State's expert witnesses, Loren Marks, he's a family studies professor, he did a review of the research on gay parent families up until 2005. Has there been any research in this area since 2005?

A. A lot of research. At least a couple of dozen studies that have made direct comparisons between gay and/or lesbian families and heterosexual families, as well as other studies that have looked only at gay and lesbian families and looked at the family process variables that predict adjustment within those families.

Q. The research from 2005 to 2014, is it using all the different methodologies we've just discussed?

A. It is.

Q. We've been talking about studies. I'd like to switch gears for a moment to talk about your clinical experience with real families.

You mentioned that you have clinical experience working with families headed by same-sex couples. Is there anything about your experience working with these families that is inconsistent with the research findings that children's adjustment is not affected by their parents' sexual orientation?

A. Nothing. I mean, I've been working with gay and lesbian families from probably the late '80s, 1980's to the present. [104] At any one time now in my clinical practice in California, a third to 50 percent of the families I'm seeing are gay and lesbian, usually adoptive families, but not always. And they, they form families and parent their children in the same way, just as in a healthy way as do heterosexual families.

Q. You've already testified as to your opinion on the impact of parent sexual orientation on parenting ability and the well-being of children.

Is there any basis for the assertion that children raised by same-sex parents are at a greater risk of adjustment problems?

A. In my opinion, no.

Q. How well established is it within the professional fields, focused on children's well-being, that children raised by same-sex couples fare as well as those raised by heterosexual couples?

A. Very well. There is a consensus among all the major professional organizations that focus on the physical and mental health and welfare of children.

Q. What are those organizations?

A. You've got listed up there some of them, not all of them. But certainly the American Psychological Association, the American Psychiatric Association, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, the National Association of Social Workers, Child [105] Welfare League of America. And there are others.

Q. To your knowledge, have all of these professional organizations issued policy statements that are supportive of same-sex parenting?

A. Yes, they have.

Q. Could you turn to the next tab?

A. "C"?

Q. Yes. All right. This is a policy statement from the American Psychological Association. Are you familiar with it?

A. I am, yes.

MS. STANYAR: I move for its admission.

* * *

MS. STANYAR: 112.

MR. POTCHEN: No objection, your Honor.

THE COURT: Very well. It will be received.

(Exhibit #112 received, 12:01 p.m.)

[106] MS. STANYAR: And we also move to admit the list of organizations, which is exhibit number?

MR. POTCHEN: That's a demonstrative exhibit?

MS. STANYAR: Yes.

MR. POTCHEN: Well, you wouldn't admit a demonstrative exhibit.

THE COURT: 110 will be admitted as a demonstrative.

MR. POTCHEN: Okay.

(Exhibit #110 received, 12:01 p.m.)

* * *

[107] BY MS. STANYAR:

Q. What is the policy statement with respect to same-sex parenting and the outcomes for children of the American Psychological Association?

A. Do you wish me to read this?

Q. Yes.

A. Okay.

THE COURT: You don't have to read it, because it's an exhibit already.

THE WITNESS: I'm sorry. There is no scientific basis for concluding that lesbian mothers and gay fathers are unfit parents on the basis of their sexual orientation. Overall, the results of research suggest that development, adjustment and well-being of children of lesbian and gay parents do not differ markedly than that of children raised by heterosexual parents.

BY MS. STANYAR:

Q. Do you believe this policy statement, which you just read, accurately summarizes the state of the social science research [108] on the effect of gay and lesbian parenting on child adjustment?

A. I do.

Q. Is it consistent, not identical, but is it consistent with the policy statements with some of the other organizations that we talked about?

A. Yes, it is.

* * *

[138] BY MS. STANYAR:

Q. What if a legal parent can establish a guardianship for the partner, would that remove your concerns, the recurrent – the concerns that you raise about the absence of a second, a legal relationship with the second parent, in terms of psychological [139] effects?

A. In my opinion, it doesn't afford the child the same level of permanency. In my experience in doing work in this area, particularly court-related work, guardianship can be challenged by a biological parent. So if the guardianship is challenged, then the, the guarantee of continuity of relationship is challenged then, too.

Q. So from the child's perspective, is there that sense of permanency in a guardianship situation, based upon your experience?

A. For young children, they don't know the difference. But older children do recognize the difference. And no, it doesn't afford the same level of permanency as a legal tie, either through adoption or through birth.

Q. When couples are married, does it afford social benefits to their children?

A. Absolutely.

Q. What are those?

A. Well, again, social capital. Marriage brings a recognition by society that, that this is a legitimate family; that you are the same as any other family. And children experience that. And in the absence of it, they also experience the reverse. They experience the sense that others view them as different, and different can lead to feeling a stigma.

Q. When couples are married, does it afford any, any benefits [140] concerning stability?

A. Absolutely. Marriage, married couples stay together longer than cohabiting couples. That benefits children. It also, married couples guarantees the child's, legally guarantees the child's relationship with both couples, should the couple break up.

Q. You touched upon the economic resources of the family in your report, is that right, as it relates to being married?

A. I did.

* * *

BY MS. STANYAR:

Q. How many children in the foster care system in Michigan are freed for adoption, but waiting for a family to come forward to adopt them?

A. About 3,500, a little bit more.

Q. Where does that number come from?

[141] A. It comes from the federal government from the, what's called AFCARS. It's A-F – I'll just say the name. The Adoption and Foster Care Analysis Reporting System.

Q. You've already talked about, you've already told us what it meant to be freed for adoption, that the parents' rights have been terminated.

What are the characteristics of the children who are waiting to be adopted?

A. They tend to be older. They tend to have what are called special needs, which means possible medical problems, possible psychological problems, developmental delays, academic problems. They are more often proportionately children of color. They are often sibling groups.

Q. What happens to these children if there are no families available to adopt them?

A. They linger. They linger, and unfortunately, as I said, it's not necessarily lingering in a single home. Too often, they move from home to home for a variety of reasons.

Q. Do any of these children reach adulthood without being adopted?

A. Yes. Nationally about 26,000 a year age out, it's the term. They age out of the foster care system.

Q. What are the future prospects for children who age out of the foster care without getting adopted into a family?

A. They are bleak. We have increased evidence of [142] homelessness, increased evidence of criminality, increased evidence of illicit drug use, alcoholism, increased likelihood of entering into, into incarceration, mental health problems. They have no family to rely on. Their resources are extremely limited. The outcome is bleak for these, these young men and women.

Q. Based upon your work as related to adoption, based upon your work with the Donaldson Institute, do you have an opinion about whether the inability for a couple, same-sex couple to adopt jointly would be a barrier to that couple adopting children out of the foster care system?

A. I do have an opinion.

Q. What's your opinion?

A. Well, after 30 years in this field, working with agencies around the country, talking about the barriers, you know, helping them to remove the barriers, and institute writing about these barriers, we know that if we can remove barriers of all sort, legal barriers, the atmosphere barriers that exist in the agencies, in terms of lack of training or attitudes about gays and lesbians and so forth, we were – we will likely increase the pool of suitable adoptive parents and decrease the number of children who will continue to wait in foster care. In other words, we'll get them into permanent homes.

Q. Why would –

MR. POTCHEN: Your Honor, based on that answer, he's [143] made it very clear that the foster care system and the adoption, second-parent adoption are not relevant to the issues at this trial. We again restate it.

THE COURT: I'm not sure, but do you have many more questions?

MS. STANYAR: I don't. I only have like four or five more questions..

THE COURT: This point has gone over. Go on.

MS. STANYAR: Okay.

BY MS. STANYAR:

Q. Why would this particular thing, the refusal to have a second parent adopt, why would that be something that discourages?

A. Well, one of the barriers has to do with the environment that exists when people come to adopt. I cannot think of anything more disrespectful to the couple coming in, to be sit down and to explore adoption, they are very motivated, they want to adopt, and they are told, well, you can adopt, but you can't. You can be the legal parent, but you can't. You can – you have a guaranteed relationship with this child forever and the child has a guaranteed relationship with you forever, but we're not so sure about you.

That really undermines, you know, the whole adoption process. It has to create, in my experience, it creates difficulties for the individuals. And I suspect, and what [144] people have shared with me, as I've gone around consulting, it's a barrier that sometimes people just don't know how to overcome.

Q. Does it discourage them from adopting?

A. I think, in my experience, it can discourage some, some people for adopting.

Q. Has the Donaldson Institute published any documents addressing barriers to adoption by same-sex couples?

A. Yes. We have three articles, two authored by Jean Howard, and one authored by myself, all of which have recommended the states to allow both joint and second-parent adoption so as to remove legal barriers for permanency for children in foster care.

Q. Why has the Donaldson Institute advocated for removing barriers to gay couples jointly adopting?

A. We are a child advocacy organization. We focus on the needs of children, particularly the needs of children in care. There are not enough families available nationwide, and clearly also in Michigan, because we have children who are waiting.

We need a larger pool of interested, well trained, capable individuals, including gays and lesbians. Removing these barriers will increase the pool. When we don't have – when we have these barriers in place, and historically there's been a lot of barriers, we know the pool is much smaller.

Q. You mentioned earlier that children awaiting adoption are [145] often children of color, children of special needs.

Is there any research on same-sex couples' openness to adopt interracially?

A. Yes, there is. And they are more likely to adopt interracially than heterosexual couples.

Q. Is there any research on same-sex couples' general openness to adopting, at least in states where they are able to adopt as a couple?

A. I'm sorry. Repeat that.

Q. Is there any research on same-sex couples' openness to adopt generally?

A. Yes. There, actually, the census data and other large scale data sets published by Gary Gates indicates that gays and lesbians are approximately four times more likely to adopt than heterosexuals, and six times more likely to foster a child than heterosexuals.

Q. And lastly, in your opinion, how does Michigan's prohibition against joint adoption by same-sex couples affect children awaiting adoption out of foster care?

A. It increases the potential risk for them, that they will continue to linger longer and suffer the experiences of foster care and, perhaps, even continue to linger in care to the point where they age out.

MS. STANYAR: Thank you, Doctor.

THE COURT: Okay. We will stand in recess until two,

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET AL.,

Plaintiffs,

v.

RICHARD SNYDER, ET AL.,

Defendants. /

HONORABLE BERNARD A. FRIEDMAN

No. 12-10285

BENCH TRIAL
VOLUME 1

Tuesday, February 25, 2014

Appearances:

FOR THE PLAINTIFFS:	CAROLE M. STANYAR, ESQ. DANA M. NESSEL, ESQ. KENNETH MOGILL, ESQ. ROBERT SEDLER, ESQ. VICKIE HENRY, ESQ.
FOR THE DEFENDANTS: RICHARD SNYDER BILL SCHUETTE,	TONY C. DETER, ESQ. KRISTIN M. HEYSE, ESQ. JOSEPH E. POTCHEN, ESQ. MICHELLE BRYA, ESQ.
LISA BROWN	BETH M. RIVERS, ESQ. ANDREA J. JOHNSON, ESQ. MICHAEL L. PITT. ESQ.

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* * *

[10] [Mr. Potchen] Q. When doing research on child development, I'm going to now move on to research, okay – you agree that the use of convenient samples is the traditional method?

A. Correct.

Q. And convenient sampling is basically done by getting data from people who volunteer or who are selected due to their availability and easy access, correct?

A. Correct.

Q. And the advantages of this type of sampling is the availability and the quickness to which data can be gathered, correct?

A. Correct.

Q. The disadvantages are the risks that the sample might not represent the population as a whole, correct?

A. Correct. If that is the question of interest, then, [11] correct.

Q. And another disadvantage is it might be biased by the volunteers for the sample?

A. That's possible.

Q. You agree that much of the research on child development in same sex households is based on convenient samples, correct?

A. The bulk of it is, yes.

* * *

[13] Q. Now, the APA's policy statement came out in 2005. Are you aware of that?

A. Yes.

Q. And the APA policy statement relied on 67 manuscripts. Are you aware of that?

A. I wasn't aware of the specific number.

Q. Okay. Did you know that only 59 of those manuscripts were published?

A. Again, I don't know the specific of what they based it on.

Q. You don't know any of the specifics?

A. I wasn't part of the group that assessed that.

Q. Okay. Were you aware that 45 of those studies are based on convenient samples?

A. That would probably be accurate. I don't know the specifics, but certainly convenient samples were the main type of samples available at that time.

Q. Were you aware that one of the studies forming the basis for the APA policy statement had only five participants?

[14] A. I wasn't aware of that, no.

Q. Did you know, of the 59 published studies, 26 did not include a heterosexual comparison group?

A. I did not. But, of course, again, the question of which comparison group is governed by the questions of interest.

Q. These had no comparison groups. Were you aware of that?

A. I wasn't aware of that, no.

Q. Did you know of the 33 published studies which had comparison groups, 13 of the comparison groups were single parents in comparing them to same sex couples?

A. I wasn't aware of that.

Q. And so I guess you wouldn't know of the 20 remaining, how many consisted of two biological heterosexual parents?

A. I would not know that, no.

* * *

[26] Q. Right. And none of these studies specifically tracked same sex married couples, correct?

[27] A. I don't know if she had – she required the heterosexuals to married. We assume that most are, but we don't know the actual number.

Q. You don't know?

A. We don't know.

Q. And, in fact, and I guess you already said this, but it's too recent to get that kind of data again, isn't that true?

A. Not on married heterosexuals.

Q. I'm sorry. Married same sex.

A. We are talking about heterosexuals.

Q. I am talking about married same sex.

A. It's probably too soon to get adequate data on married same sex couples.

* * *

[51] BY MR. MOGILL:

Q. So let's just make sure that the record is clear, professor. The How Couples Met And Stay Together Study, did that or did that not start with the census?

A. [Michael Rosenfeld] No.

Q. This is entirely separate?

THE COURT: Now I understand.

BY MR. MOGILL:

Q. We will be talking in a moment about your demography study which was based on the census?

A. Right.

Q. Okay. How long, professor, have sociologists been studying families and children?

A. Well, the birth of sociology as a discipline, it goes back to the late 19th Century. And right from the beginning, sociologists were studying the family. So as long as there has been sociology, there has been sociology of the family.

Q. Within the discipline of sociology is there at this point in time a scholarly consensus about the impact on children of being raised by same sex parents?

A. There is absolutely a scholarly consensus.

Q. What is that?

A. The scholarly consensus is that children raised by same sex couples are at no disadvantage.

[52] Q. How has the consensus been expressed in the field?

A. So, the consensus has been expressed in sociology through an Amicus Brief that the American Sociological Association submitted in the Perrin and Windsor cases.

Q. The United States Supreme Court this past term?

A. This past term.

Q. And how many members are there in the American Sociological Association?

A. I believe there are in excess of 14,000 members in the American Sociological Association which I believe accounts for the majority of all people in the United States with sociology Ph.D's.

* * *

Q. Are all of the sociologists in the USA from the same kind of background and same kind of political perspective and same kind of views on the world?

A. No. There is a broad range of people covering probably the whole range of people that there are in sociology.

Q. Is it common or not within the field of sociology to [53] come to a consensus on a question such as this?

A. Consensus is actually somewhat unusual. I do research in quite a number of the areas where there is no scholarly consensus, and that's okay. There is several different camps with different theories and they defend those different theories and that's fairly typical. So scholarly consensus in sociology is not that common.

Q. Is the conclusion that children raised by same sex parents have outcomes as good as the outcomes for children raised by opposite sex parents subject to reasonable debate within the field of sociology?

A. I don't believe so.

Q. Why not?

A. Well, the Amicus Brief, the consensus is a consensus opinion that this debate has been settled. So you couldn't have a consensus if there was sort of a fundamental question about the central issue. So, I believe that the consensus is an indication that there isn't fundamental debate about the central issue, but that doesn't mean that there isn't any debate at all about any issues of relevance.

Q. Is the manner in which the American Sociological Association made its determination to submit that Amicus Brief a further indication of the extent of the consensus within the discipline?

[54] A. Yes. What I know about this is that the brief, the text of the brief, the substance of the brief was voted on and unanimously approved by the elected counsel of the American Sociological Association. So to me that indicates that there is broad support for this consensus.

Q. Is it reasonable for an academic to assert that research into this subject is in its infancy or preliminary?

A. I don't believe so.

Q. Why not?

A. Because the consensus is based on broad research. A lot of that research is in psychology and developmental psychology. But there is a big field of research on children's outcomes for children raised by same sex couples. And the literature seems to show very definitively that those children have good outcomes.

Q. Within the field sociology, is there a consensus as to whether there are any particular social circumstances that are consistently associated with poorer child outcomes?

A. Absolutely. So we know that poverty is associated with poor child outcomes. We know that living in segregated neighborhoods has a negative effect. We know that parental education has a big influence over children's outcomes, so children who grew up with parents [55] who are high school dropouts, for instance, are at a really serious disadvantage. And we also know from the literature on families that family instability, that is, children whose family go through many transitions, divorce and so on, that they are at a real disadvantage as well.

Q. Okay. Is it important to keep these kinds of factors in mind when engaging in research in the field in order for one's research to be valid and reliable?

A. Absolutely. You have to account for the things that we already know have a big impact on children if you want to measure anything else.

Q. You've mentioned that among your published and peer reviewed work has been a study that was published on demography. The name of that study again is?

A. Non-Traditional Families And Childhood Progress Through School, I believe.

Q. I'm going to ask you if you could look, please, in your book.

MR. MOGILL: May I approach?

THE COURT: Of course.

BY MR. MOGILL:

Q. We're going to find 109 here somewhere. 109. It was admitted during Doctor Brodzinsky's testimony. Professor, I've turned your binder to Exhibit 109 which already has been admitted into evidence.

[56] A. Okay.

Q. Can you identify that?

A. That looks like my 2010 demography paper.

MS. HEYSE: For clarification, it's not been admitted.

THE COURT: I don't think it's been admitted.

MR. MOGILL: I stand corrected. I apologize.

BY MR. MOGILL:

Q. Is that your paper?

A. It is.

Q. You authored it?

A. I did.

MR. MOGILL: I move its admission.

THE COURT: Any objection?

MS. HEYSE: No objection. The parties stipulated to allowing the witness's original articles.

THE COURT: Thank you. I appreciate that. And I would so rule. So it's admitted.

MR. MOGILL: I apologize for not remembering it has not been admitted.

THE COURT: That's great. As I said at the beginning, your cooperation is fabulous.

BY MR. MOGILL:

Q. Professor, with respect to this demography study would you tell the Court, please, why you engage in this [57] research?

A. Well, going back to my dissertation at the University of Chicago, I had been using the census to study families. So I was well familiar with the census data. And when you have a tool and a resource at hand I suppose one is always thinking about what you can do with the tool and the resource.

So I was aware that there hadn't been studies of children raised by same sex couples using the US Census data and so I set about to try to figure out if I could study that population with this data set. And the data set has some natural advantages. It has some disadvantages too which I suppose we will discuss. But one of the natural advantages of the 2000 US Census is that it's enormous in sample size. Even small populations you find a lot of people in the 2000 US Census, public use files.

Q. Okay. And what was it that you wanted to examine in particular in this specific study?

A. Well, so, what I wanted to know is if there was a way we could figure out something useful about children's outcomes for children raised by same sex couples and in the Census there is not a lot of questions about children. But the one thing, two things that we know is how old they are and what grade they are in. It's possible to figure [58] out with those two pieces of information if the child is making good progress through school or if they appear to have been held back.

Q. Now, the Census is a cross-sectional study, right?

A. Yes. The census – I am glad you asked me that. The census is a cross-sectional study.

Q. How do you find out about something longitudinal if you are using the cross-sectional study?

A. Exactly. That's a key question. So ordinarily, you would only know what family the child was living with at the time of the Census which wouldn't help you answer the question about what the family was when the child was going through school in the past few years, but there is an additional question in the Census about whether or not all the members of the household were living in the same place five years ago and if they are all living in the same place five years ago, you can – you know that the family has been together for at least five years. So that knowledge helps you know that the family that was there at the time of the Census has been together for at least five years and then you know at least five years worth of who was raising the child.

Q. What was the overall size of your sample in that study?

A. As I mentioned, the Census is a big sample survey. [59] So there were 700,000 primary school children in the sample including the three thousand children who had been raised by same sex couples.

THE COURT: How did you get the sample? How did you determine – just random?

THE WITNESS: No. The Census files are available to everybody. And so I downloaded them and then I was looking for the grade school children and I selected them.

THE COURT: I see. There are seven hundred thousand?

THE WITNESS: Seven hundred thousand children who have lived at least five years with the family.

THE COURT: I got it now. Thank you.

BY MR. MOGILL:

Q. How did you identify which ones were being raised in same sex households?

A. So, the Census is a survey that is filled out by the head of household. And they indicate, they indicate a bunch of things about themselves and everybody else living in the household. So if they indicate that another adult in the household is their spouse or their unmarried partner and they indicate that that person is the same gender as they are themselves, then that is a same sex couple.

[60] Q. Okay. And obviously in 2000, this predated legalization of same sex marriage in any state?

A. Right. There wasn't federally recognized or state recognized marriage for same sex couples. But many same sex couples reported themselves as married anyway because they have marriage like commitments. They considered themselves married. So, it's not – the Census recoded them actually. The Census didn't allow the married answer to stand, but it was fairly common for same sex couples in long term committed relationships to report themselves as married. In my own data I see that as well, that couples who live in states where there is no same sex marriage report themselves as married if they have

been together for a long time and they made that marriage like commitment.

Q. Are there other same sex couples who were not legally married at the time who you were able to identify as couples but –

A. There were two options. You could identify the other – the head of household could identify the other person as their spouse or as their unmarried partner.

Q. Professor, how long from beginning to develop the study design to publishing the article on demography, how long did it take you to do this study?

A. It took about four years from when I started [61] planning that study to when the paper actually came out which might seem like a long time. It seemed like a long time to me. And that's just sort of the nature of how academic publishing in the social science works. It's a very slow process.

Q. Okay. As a result of the study, is there a main overall finding that you have?

A. Yes. The main overall finding is that progress through school for children raised by same sex couples is just as good as the progress through school for children raised by any other kind of family when you compare similarly situated families, that is, families with the same incomes, families with the same parental education and so on.

Q. Okay. Now, I'm going to ask you a lot of questions about that.

A. Yes.

Q. And is it correct that you prepared a series of slides to show the Court today that will help explain how you came to that conclusion?

A. Yes, it is.

Q. And is it also correct that in the course of going through these slides that you are going to address the kind of factors you've identified?

A. Yes.

[62] Q. And so where is the starting point, professor?

THE COURT: Before you start, usually I take a break at 3:30 but it seems like a good spot to break. No use for him start and stopping so we will take about twelve minutes, give or take. Let's try to reconvene at twenty to.

(Recess from 3:25 p.m. until 3:45 p.m.)

THE COURT: You may be seated. Thank you, very much. You may proceed.

MR. MOGILL: Thank you, Judge.

THE COURT: Okay.

BY MR. MOGILL:

Q. So, professor, at the break we were just about to start taking a look at your data.

A. Yes.

Q. How you break it down.

A. Yes.

Q. And explain to the Court where you start and how you got to your conclusion?

A. Right. So, what I want to do first is just show –

THE COURT: Is this an exhibit?

MR. MOGILL: This is a demonstrative exhibit. It's identified as such as our list.

THE COURT: Is it in your book?

MR. MOGILL: Yes.

[63] THE COURT: What number, just so we have a whole record. You don't have to tell me right this second. I just think the record, we have to make sure what we are doing.

MR. MOGILL: 202.

THE COURT: 202. Thank you.

MR. MOGILL: I apologize.

THE COURT: No problem. That's why we are looking at the screen.

BY MR. MOGILL:

Q. 202, professor.

A. So, this is actually a table that's adapted from my 2010 demography paper. And what I want to do with this table is give a little bit of perspective about what we are talking about when we talk about percentage of children who have ever been held back. These are primary school, elementary school children. What percentage have been held back and what kind of different categories. It's important to have a little bit of perspective about how big the differences are we are actually talking about.

Q. I want to interrupt you for a second.

A. Yes.

Q. Why is it that you choose to study elementary school children?

A. Right. So, because in the Census we only know what [64] the family was for the past five years, that five year window covers all or most of elementary school for these children. But if you are looking at later outcomes, high school or something, then the five year window only covers a fraction of their progress through school. So the key is we want to know as much as we can about what the family was when the child was going back through school. You don't know what the family was. So the early outcomes are the only, I think the only outcomes that are relevant.

Q. Is there another reason why it's useful, particularly useful to study early outcomes?

A. Right. So research on children and on educational outcomes over the life course really shows that a lot of disadvantage is sort of fixed in at the early ages. We are sort of getting earlier and earlier in our understanding and approach to sort of the differences between children and readiness for school. It's sort of a big thing that they measure at the kindergarten levels. So, and those things actually have a lot of predictive, pretty good value for who is going to do well in school later on. So the early years are important for the children and for the design of the study both.

Q. Okay. With that background, what do you have?

A. So, the numbers for children left back in school, these are the raw numbers and so they're not – in this [65] column here.

Q. What do you mean by raw numbers?

A. What I mean is this is – in this column it's numbers that are not corrected for whether the family is rich or poor, whether they live in a rural area or the suburbs and so on. It's sort of the average for that group. And, of course, so there is a couple points I want to make about the averages. And with respect to what I was saying about what we know affects children's outcome. So there is a variety of

family structures here. The heterosexual married couples, their children have a 6.8 percent –

Q. I want to interrupt you.

A. Yes.

Q. Before we go into each subcategory, why don't we identify what these subcategories are to the Court?

A. So first subcategory is family type. And then there is child's relationship to the head of household. So most of the children are natural born children but there are also adopted children, step-children, foster children that are identified as much in the US Census. We have child's race, and on the next page, because this table goes over two pages, we have income of the household, gender of the child, metropolitan status, meaning suburban, urban and rural, and householders' education, education attainment [66] of the adult.

Q. So now that we've identified the universe of factors we are looking at, let's go back to the first slide. I know you were starting to talk about raw numbers there.

A. So, what you see here at the top is the children raised by heterosexual married couples. They have a 6.8 percent rate of grade retention. The children raised by same sex couples had a 9.6 percent rate of grade retention. So it's a difference of about three percent. It turns out that most of that three

percent difference is actually explained by the difference in income and education of the families.

Q. Is that reflected anywhere on this slide?

A. Absolutely. So, when you control, if you go to the far right column, is the difference to the reference group in each category significant after you accounted for the key factors, and the main key factors are income and education, the answer is, no. The children of same sex couples can't be statistically distinguished in terms of progress through school from the children of heterosexual married couples after you account for – when you are comparing apples to apples, comparing rich families to rich families and poor families to poor families. And that's a key finding.

So, and there's other things we know affect [67] children's outcomes. So, relationship to the head of household has a big influence. The natural born children who are also the most likely to have lived their entire life in that family, they have the lowest rate of grade retention. There is pretty big differences by race. The Asian-American children are actually the most likely to make good progress through school.

Q. If I can interrupt you before you move to race. Is relationship to the head of household something specifically identified in the US Census?

A. Yes. Right. So there is different categories for the different relationships. Adopted, step, and foster

children are separate boxes to check on the long form of the Census.

Q. Okay. I'm going to have another question for you about that maybe half an hour, forty-five minutes from now.

A. I'm looking forward to that. So, as I was saying, there are big differences by race as well. So, Asian-American children actually are slightly more likely to make good progress through school than white children who are more likely to make good progress than Hispanic children who are likely to make good progress than African-American children, and so on. There are big differences based on household income and that sort of [68] goes along with the way that you would expect. The most well to do families have the children who are least likely to be held back in school. And the poor families have the children who are most likely to be held back in school. And those differences are much greater than the differences between, say, heterosexual married couples' children and the children of same sex couples.

Female students, girls, I suppose you would say, for elementary school, are more likely to make good progress through school. They are less likely to be held back than boys. Children whose school is in the suburbs who live in the suburbs, they have a lower rate of grade retention than students who live in the city who in turn have a lower rate of grade retention than people in rural areas. And lastly, the householders' education has an enormous influence as well.

So, the children whose – who live in a household where the head of the household has a college degree, only 4.4 percent of them have been held back in school. But the children who live in a household where the head of household has not completed high school, they have a rate of grade retention of about 14.3 percent.

Q. Okay. So you started out with these aggregates.

A. Right.

Q. And then where do you go from there?

[69] A. So one other thing that I wanted to mention about this is that there is a couple of categories of, you know, it's natural in a sense to compare the children of same sex couples to the children of heterosexual married couples, but there are other comparisons that are natural and relevant as well.

So if you look down here, the heterosexual cohabiting couples, these are couples in the 2000 Census, heterosexual couples that were not married. Their children had a rate of grade retention of 11.7 percent which is actually a little bit more than the children who were living with same sex couples which was 9.6 percent.

Now, the difference between 9.6 and the 11.7 was not statistically significant. So I think we would say that as far as we can tell from the data, there was no difference that we can measure between the progress through school of the heterosexual cohabitors and the

same sex couples. And what is relevant about that is that in 2000 and we are talking about children, the Census was in 2000, so these are children going through school in 1990's. So, the same sex couples, none these same sex couples were legally married in the United States at that time. So, to a large extent, the heterosexual cohabiting couples are in one sense the most natural comparison because they are the most similarly situated in terms of [70] legal status.

Q. Okay. Now, when you take all of these factors into account, you have these controls, you have already indicated that there is no statistically significant difference.

A. Right.

Q. Could you explain to the Court how it is that process, without getting deeply into math and going over all of our heads, how that process is carried out so that you get a fair number and a fair statistical comparison?

A. Right. So, there are procedures in applied statistics for comparing groups while controlling for other things. And maybe that's the most I should say about that which is it's well-established how you can control for something like family income or parental education and then look at the difference between two other groups net of whatever the difference between income and education might explain. And as I say about the difference between outcomes for family types, the difference between the family types are fairly narrow to start with. And after you account for

the differences in income and education which are the biggest things that drive children's educational progress, the family type groups are all clustered pretty close together.

Q. And if you could, just to make it perfectly clear, [71] why is it that you want to conduct your study in a way that takes into account these factors?

A. Because the family groups differ a lot in income and in parental education. And if you want to know what the affect of family is on children, you have to control for that. Control is kind of a word –

Q. So this family structure at this income level, this family structure at this income level?

A. Right. It really comes down to a statistical way of comparing apples to apples. You want to compare similarly situated families to similarly situated families as much as you can to see whether some other factor like family type still has an affect on outcomes after you have controlled for the things that you know affect children's outcomes.

Q. One second. Thank you. Now, professor, one of the arguments that the state defendants are making in this case is that Michigan's ban on same sex marriage is reasonable because it promotes – it helps provide an optimal child rearing environment for children. Is it possible to look at your data in a way that examines optimal child outcomes?

A. Yes. If we follow the theory, and this is not a theory that I subscribe to, but I understand your

question that this is a theory promoted by the state defendant's [72] witnesses, if we follow the theory that only families that were in a statistical sense, most likely to have children make good progress, if we only allowed groups whose average outcomes were most associated with good progress, we would actually end up excluding almost everybody. And let me just explain what I mean by that.

Among the racial groups, the Asian children actually make slightly better progress than the white children. If we excluded people based on which racial group was most likely to make progress, we would be excluding everybody except the Asian children. And if we look at income, you know, the rich children are much more – the children of rich families are much more likely to make good progress than the poor. So if we would be excluding everybody except people with the highest incomes, the children living in the suburbs make better progress than children in urban or rural areas, we would be excluding everybody except suburban residents. And parents with college degrees have children who are more likely to make good progress through school.

So if we follow this theory to its logical extent, it's a broad experiment I suppose, but if we follow it to its logical extent, only Asian families with high incomes and advanced degrees who lived in the suburbs would be allowed to marry, if that were the rule that were [73] applied.

Q. Thank you, professor. Now, I want to turn away from your study and ask you – actually, we are still going to be a little bit on your study. But I will ask you some questions about response to a particular – two particular responses to your study.

A. Yes.

Q. You are aware, are you not, that after your study was published, Professor Allen and Professor Pavaluk and Professor Price published a comment also in demography critical of your study?

A. Yes.

Q. And it's correct, is it not, that you published a reply also in demography?

A. That's correct.

Q. And it's also correct in his report in this particular case, Professor Allen has expanded on his critique of your demography study, is that correct?

A. That's correct.

Q. All right. Now, I would like to start first with Professor Allen's critique from his report. Are you familiar with that?

A. I am, indeed.

Q. Have you read Professor Allen's report submitted in this case?

* * *

[100] 1990s typically. Some of them go back to the 70's and 80's.

Q. Did you conduct an independent analysis of Professor Regnerus' data?

A. Yes.

Q. Why did you do that?

A. I was interested to know whether the results were robust. And my analysis of his data show that what predicts the negative outcomes in these subjects is the number of transitions they went through as children and that's consistent –

Q. Explain what you mean by that.

A. So if you are living with both parents and the parties get divorced, that is a transition. Maybe father moves out. And then maybe stepdad moves in a couple years later. That is another transition. Maybe the grandparents move in and they move out. All of those transitions have been shown to predict negative outcomes for children because children crave stability. And instability in the family is potentially harmful to children.

And so what is interesting about how Regnerus did the analysis is that he was comparing the children whose mother ever had a girlfriend or father had a boyfriend to the children who were raised by the people [101] with intact biological families, that is, couples where mom and dad were married to each other and stay married for the 18 years that the child

lived there and continued to stay together and be married after the child had moved out of the house.

And so he was building into his comparison of family type a comparison between children who had not had any family transitions and children who had many. And we know from thirty years of research on marriage and divorce that family transitions cast a big shadow over children's outcomes. And so if you control for family transitions in Regnerus' data which I have done, you find that all of the negative outcomes that he ascribed to having had a lesbian mother or gay father are actually predicted by family transitions. And when you control for family transitions, none of those negative outcomes are associated with lesbian mother or gay father.

Q. Have you prepared a slide that illustrates in detail the trajectory for a couple of the subjects in Professor Regnerus' study?

A. Right. So because the story is, you know, the analysis is kind of complicated, I thought it would be helpful to look at a couple of typical cases. And before I get into the explanation of these typical cases what I want to say is that my analysis of the data is based on [102] the whole data, not just on these two cases. So, I am not holding these two cases out as – the analysis does not depend on these two cases. But it's a lot easier to explain what we mean by family transitions and the life course when you actually look at a life course history of the children.

Case number one is an 18 year old female subject. She was in the category of having had a lesbian mother. She never lived with same sex couple parents because the majority of the subjects who had, who were categorized as having a lesbian mother or gay father, never lived with same sex couple. So at birth she was living with her biological mother and father together. When she was five, the biological father moved out. When the child was six, both grandparents moved in. When the child was seven, both grandparents moved out. When the child was 12, the biological father moved back in, but that didn't last so long because when she was 14, the biological father moved out again.

THE COURT: How did the two of you get all of this information?

THE WITNESS: So one of the things that is really interesting and I think useful and valuable about Regnerus' survey, is that he put the subjects through a calendar of who they lived with for every year of [103] childhood in his survey.

THE COURT: You took that all off the Canadian –

THE WITNESS: No. It's not the Canadian Census at all.

THE COURT: There is a number there. Is that on the left side? Is that –

THE WITNESS: That's the subject number in the data set, the new family structure survey, which is the data gathered by Mark Regnerus.

THE COURT: He did his own survey?

THE WITNESS: He did his own survey.

THE COURT: I got it.

THE WITNESS: He did his own survey. And it's actually an interesting survey. It's interesting in part because of how much it tells us about the relationship between family instability when you are a child and negative outcomes later on in life. So, actually it contains a lot of data about, you know, it has –

THE COURT: It was in his report so that you had access to it?

THE WITNESS: I have actually access to the data itself. The data is public. I did my own independent analysis of the data. This wasn't in his [104] report, but I actually analyzed, I downloaded his data set that he used to do his analysis. I have the same data set.

THE COURT: That's different than the Census?

THE WITNESS: Right. It's totally different from the Census.

THE COURT: And it's based on a survey that he did?

THE WITNESS: Right.

THE COURT: It was available to you?

THE WITNESS: Right. It's publicly available. Anybody – and that's the norm in the social sciences, is that you get the grant. You do the survey.

THE COURT: Now I get all of that.

A. So, case number one, you know, went through a lot of transitions as a child. This is sort of a more than average number of transitions, but never lived with same sex couple. And she is only 18. I just have a little bit of information there. She never has been arrested, never been convicted, light smoker. Not much you can say about her outcomes particularly. She was on public assistance, apparently, at some point growing up. She is on public assistance at age 18.

There is – it's fairly typical that children who are raised in poverty, at least early on, they were in [105] poverty again. And what I just want to point out is that you might wonder, how could case one be categorized as being the daughter of a lesbian mother since the only partner she ever – the only family she ever lived with were mother and father together? So the answer is that that is how most of the lesbian mother and gay father families are in Regnerus' data. Most of them never lived with same sex couples. And the reason that is important is because it's the same sex couple's influence on the child that we are really trying to understand. And you can't really say, using

case one, you can't say anything about the affect of committed same sex relationships on children because this subject never lived with a same sex couple at all.

Q. How about subject number two?

A. Subject number two is typical of the smaller group of subjects who at one point did live with a same sex couple. So when she was born she was living only with biological mother. When the subject was age one, biological father moved in. At age 11, biological father moved out and mother's girlfriend moved in. So for two years from 11 to 13, the subject was living with biological mom and biological mom's girlfriend. She was living with the same sex couple for two years. And then at age 13 there was a change of custody. We don't know [106] why. She moved out of mother and mother's girlfriend's house and moved into biological father's house. And for the rest of her childhood she was living with biological father.

Q. What conclusions can we draw about the influence of being raised in a same sex parents from subject number two or case number two?

A. There's a few things to say about this. One is that there is a lot of transitions and turmoil around, before and after the co-residence with same sex couples. Same sex couple, the subject was only living with for two years and the child was 18 years. So there was a lot of other stuff going on.

The second thing that is typical about this case is that there is the biological mother and father family first before there is the same sex couple. That is how most of the – the vast majority of children who lived with same sex couples in the Regnerus data set, the new family structure, the vast majority of those couples, those children were first with the biological mother and biological father.

And what is relevant about that is that the biological mother and biological father family has to break up before the same sex couple is formed. And we know from research on marriage and divorce that the [107] breakup or the divorce of the heterosexual, the biological mother and biological father couple, that that breakup and whatever rancor or turmoil accompanies it, that has some potentially negative repercussions for children.

What is difficult in the survey data since most of the children who end up living with same sex couples first had to go through this difficult transition. It's very difficult with the survey data to separate out whatever affect there might be if there is any of same scx couple parenting on children because there is this earlier turmoil that precedes it. Now –

Q. So is there a different way that a researcher who is interested in getting meaningful, valid, reliable information could have gone about that, for example, with subjects like these two?

A. Well, so, one of the things that you find in the child development psychology literature that

studies children raised by same sex couples and that literature is outside of my immediate area, so I don't know everything there is to know about that literature, but there are some well known studies that look at planned same sex couple families, that is, lesbian couples who become pregnant through donor insemination or assisted reproductive technology. And so in those families, the child comes in the families at birth. There is no previous disruption.

* * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs,

-v-

RICHARD SNYDER, ET. AL.,

Defendants. /

Case Number: 12-10285

VOLUME 2 – AM SESSION

BENCH TRIAL
BEFORE THE HONORABLE
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
WEDNESDAY, FEBRUARY 26th, 2014

APPEARANCES:

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To Obtain Certified Transcript, Contact:
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* * *

[9] we know about the way formalization works among couples is we would expect that as they have more recognition and more legal rights that they would gain even more stability benefit from that recognition.

So to a certain extent all the data that we have from the past about same-sex couples stability is an unequal test because the heterosexual married couples have rights and benefits that the same-sex couples didn't have. And even despite that unequal test the comparison shows that they're quite comparable.

[Mr. Mogill] Q Thank you.

Professor, I want to ask you a couple of questions – a couple more questions on issues of stability that go to the concern raised by the State defendants that legalization of same-sex marriage could have negative effects on opposite sex marriage. It's correct, is it not, that we now have about a decade's worth of experience in Massachusetts and growing experience in the other states that have legalized same-sex marriage. Is there any evidence in the research that legalization

of same-sex marriage has had any negative effect whatever on the stability of or the rate of opposite sex marriage?

[Michael Rosenfeld, Ph.D.] A Yeah, that's an interesting question and the answer is fairly straightforward, there's no evidence whatsoever that same-sex marriage has any effect on heterosexual marriage.

[10] We have a couple of interesting studies that look at state-by-state data in the United States comparing when there were changes in regime in terms of same-sex marriage by state to what the state marriage rate for heterosexuals was.

So the Dinno and Whitney is the most recent paper in this area. It looked at year-by-year marriage rates for heterosexual couples and then tried to see if there was any impact on that year-by-year marriage rate by the legalization of same-sex marriage and they determined very emphatically that there was no such effect.

There's an earlier paper by Langbein and Yost that used census data so they had three time points. The Dinno and Whitney they have year-by-year-by-year which a little more effective because these things change year-by-year. But the Langbein and Yost had three time points and they used the census data and they found the same thing that same-sex marriage didn't have any negative effect on the marriage rate of heterosexuals.

And then in my own data – so the Dinno and Whitney and the Langbein and Yost they're looking at state averages. So when they do their analysis they have 50 states over time.

In my data set I actually – I'm looking at individuals. So I'm looking at the individual heterosexual [11] couples living in the states that either do or don't have same-sex marriage. And in my data set I've shown that the divorce rate for heterosexual married couples is no different whether they live in a state that has same-sex marriage or don't. So I don't think there's any credible evidence that same-sex marriage has any negative effects.

Q Thank you. I'd like to ask you a different question now and that is you talked a little bit – really more than a little bit yesterday about statistical significance.

A Right.

Q And I anticipate that there will be testimony from at least one of the State defendants' witnesses about a distinction between an actual difference and a statistically significant difference.

From the standpoint of someone who works with statistics and data analysis is there a meaningful concept of actual difference that doesn't have statistical significance?

A I'd like to maybe address this with an example, I think.

So let's say you have a coin and you want to know if it's a fair coin, that is – in other words just as likely to give you heads or tails. And what you do is you might is you might take this coin and flip it a hundred times and see how many heads you get.

* * *

[13] the same experiment and they all got around 50 heads when they flipped the coin you would be very confident that the coin was a fair coin.

So just because 51 is more than 50 doesn't mean that you can rule out that the coin is a fair coin. In fact, the 51 heads is kind of confirming that the coin is a reasonably fair coin.

Q Thank you. Just a couple of last questions.

A Sure.

Q On the basis of everything that you know from the research in this area do you have an opinion as to whether children are in any way disadvantaged with respect to outcomes as a result of being raised by same-sex parents?

A It's clear that being raised by same-sex parents is no disadvantage to children.

Q From your prospective as a sociologist is there any rational basis at all for a claim that children develop better with a mother and a father than when raised by same-sex parents?

A There's no basis for that.

Q Stated another way, from your prospective as a sociologist is there any reasonable basis for questioning whether children raised by same-sex couples have outcomes as good as children raised by opposite sex couples?

A I believe that the literature is really clear in that [14] the fundamental research social science consensus on this issue hasn't been questioned in any reasonable way. That there's no reasonable basis to question that scholarly consensus.

MR. MOGILL: Thank you.

I have no further questions.

THE COURT: Thank you.

You may cross-examine, counsel.

You may move the podium where you would like it if you don't like it there.

MS. HEYSE: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. HEYSE:

Q Good morning, Dr. Rosenfeld.

A Good morning.

Q How are you today?

A Excellent.

Q Doctor Rosenfeld, you understand that Ms. Deboer and Ms. Rowse, the plaintiffs in this case, would like to get legally married in the State of Michigan; correct?

A That's my understanding.

Q And you understand that no state in this country has permitted same-sex marriage until 2004 in Massachusetts?

A That's my understanding as well.

Q So same-sex marriage is a relatively new concept in

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[21] on review of others' literature especially with regard to the same convenient sample studies, yes or no?

A I don't think I can answer that yes or no. I need to qualify that.

THE COURT: That's fair.

A So –

THE COURT: Counsel will let you know if she wants you to qualify that.

MS. HEYSE: I'll move on.

BY MS. HEYSE:

Q In preparing the report for this particular case you, in fact, had assistance from plaintiffs'

counsel in determining what literature would be useful and relevant to the Court; is that correct?

A They did help me figure out what issues –

Q Is that correct, yes or no?

A Yes.

Q And plaintiffs' counsel assisted you in determining what issues were relevant for purposes of your report; correct?

A Correct.

Q Thank you.

And your research is focused on large sample nationally representative studies; correct?

A Correct.

[22] Q So you would agree with me that you're not as familiar with the small sample convenient sample studies; correct?

A That's correct.

Q That's not really your area of expertise.

A That's right.

Q Okay. And you don't have a firm grasp on the details of those small sample, convenient sample studies; correct?

A I'd like to qualify that and say that I don't have a firm grasp on the details of them all.

Q Okay. Fair enough.

And you would agree with me that there are limitations to small convenient sample studies; correct?

A I'd like to qualify that answer as well.

Q I don't think it requires a qualification.

THE COURT: If you can answer yes or no, fine. If you can't, just say you can't.

A Yes.

BY MS. HEYSE:

And small sample convenient studies don't allow for statistically powerful test of hypotheses; correct?

A The – I'd like to qualify that as well.

Q Well, Dr. Rosenfeld –

A Well –

MR. MOGILL: If the witness says he can't answer it yes or no –

[23] THE COURT: If you can't answer it yes or no just tell her.

BY MS. HEYSE:

Q If you could then turn to page 119 of your deposition?

A Sure.

Q Half way through the page there, there's a question posed and I say to you,

"I think you mentioned in your testimony" –

MR. MOGILL: What page?

MS. HEYSE: I'm sorry, 119.

MR. MOGILL: Thank you.

BY MS. HEYSE:

Q I say to you,

"I think you mentioned in your testimony that you acknowledge that there are some limitations with regard to small sample studies. Can you identify me – identify for me what those limitations would be."

And your answer,

"Well, all research has limitations so the limitations of small convenient studies is that they don't allow for statistically powerful tests for all your hypotheses."

That was your response; correct?

A That's correct.

MR. MOGILL: That was part of his response. The

* * *

[25] A Yes.

Q The answer to the question is yes or you're ready?

A Repeat the question.

Q Sure. We were talking about the small sample studies not allowing for statistical powerful test of hypotheses, and I said, in fact, you noted that in your demography article –

A What I noted was that – that critique exists in the literature.

Q But it's noted in your demography article; correct?

A It's noted that that critique exists in the literature, but that's distinct from saying that's my critique.

Q Okay. And you would agree that when the APA issued its statement in 2005 it did so relying almost exclusively on these small convenient sample studies; correct?

A That's correct.

Q And with these convenient sample studies instead of using a survey as you discussed in your studies the researchers find people to study that are closest to them; correct?

A Correct.

Q Okay. And it's true, isn't it, that small sample studies have many more studies of lesbian mothers than of gay men; correct?

[26] A That's correct.

Q Now, Dr. Rosenfeld, are you familiar with Gary Gates?

A I am.

Q And isn't it true that both of you analyze census data?

A That's correct.

Q And you would agree with me that Gary Gates is the predominant expert in census data; correct?

A He's one of the predominant experts in census data as it relates to same-sex couples for sure.

Q And are you aware if you qualified that answer in your deposition?

A I don't remember.

Q In fact, you consulted him with regard to your study on "How Couples Meet and Stay Together"; correct?

A That's correct.

Q So you would agree with me that he knows the census data better than you; correct?

A I don't believe I said that.

Q Okay. If you could turn to page 41 of your deposition.

A Can I continue my answer?

Q I'm going to read this to you,

> "Gary Gates has a lot of expertise in the census data and I think probably knows the consensus data better than I do."

* * *

[29] A That's correct.

Q Thank you. Now, you also have some criticisms of Dr. Regnerus' study; correct?

A Yes.

Q And you believe that Dr. Regnerus' New Family Structure Study, NFSS, his data is high quality though; correct?

A I think it's high quality data.

Q Thank you. And you would agree with me that the underlying data gathering process that Dr. Regnerus' study used is mainstream social science; correct?

A That's correct.

Q In fact, there are certain strengths to the data in the NFSS study; correct?

A I'd like to qualify what those are if I may.

Q We're going to go through them so if you could just answer my question that would be perfect.

A All right.

Q There are strengths to the NFSS data; correct?

A Yes.

Q Okay. And those strengths include that it has a nationally representative – is nationally representative data which is an advantage over many data sources used to study same-sex couples; correct?

A What I would say about the advantage of national [30] represent-sensitivity is it has some advantages and some disadvantages as well.

Q Well, didn't you, in fact, state those explicit words in a re-analysis that you did of Dr. Regnerus' study?

A Yes.

Q So in other words, you specifically stated – and I quote. I mean, this is directly from your work,

> "Those strengths include it has a nationally representative data which has an advantage over many data sources used to study same-sex couples."

A Correct.

Q Okay. And another strength of that data is that the NFSS over sampled children raised at least

in part by same-sex couples allowing researchers statistical leverage; correct?

A That's correct.

Q Okay. And another advantage is that it contains a detailed year-to-year family calendar from which respondent's childhood family structure history can be reconstructed; correct?

A Correct.

Q Thank you. And it also asks many questions about a variety of childhood and adult outcomes; correct?

A Correct.

Q Thank you. Now you did your own re-analysis of Dr.

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[40] previous relationships a particular couple has had; correct?

A That's correct.

Q So you would agree with me then that the census data provides limited information regarding family stability; correct?

MR. MOGILL: I'm sorry, I didn't hear that one, I'm sorry.

BY MS. HEYSE:

Q You would agree with me that the census data provides limited information regarding family stability; correct?

A I'm going to qualify this answer and say that the census is a cross-sectional survey so it has limited information about family stability as cross-sectional surveys tend to have.

Q Now, you would agree with Mr. Dr. Rosenfeld, that the same-sex community has a small population for purposes of research; correct?

A That's correct.

Q In fact, same-sex couples compromise between one and two percent of all couples in the United States; correct?

A That's correct?

Q And the percentage of children raised by same-sex couples is less than one percent; correct?

A That's correct. And I'd like – if I could expand on [41] this answer just a little bit and say that part of the reason that we have convenient sample studies and that the convenient sample studies are valuable –

MS. HEYSE: Your Honor, I don't believe that's at all responsive to my question.

THE COURT: Your attorney – plaintiffs' attorney will have an opportunity.

BY MS. HEYSE:

Q In fact, children raised by same-sex couples and I quote, "are a needle in the haystack population"; correct?

A Correct.

Q And as a result, large sample nationally representative studies of children raised by same-sex couples are few; correct?

A That's correct.

Q I'm going to turn now to the stability of same-sex couples. There's a small body of research regarding the stability of same-sex couples; correct?

A Okay, that's correct.

Q You testified earlier that research is mixed with regard to stability. Some studies say less stable, some studies say more stable; correct?

A Yes.

Q And those studies are of short duration; correct?

A The studies – for instance, the study from the United

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[52] MS. STANYAR: Okay. Your Honor, the parties have reached stipulated facts regarding the plaintiffs. This will be Plaintiffs' Exhibit Number 53.

THE COURT: Do you want to read them into the record, please?

Is it long?

MS. STANYAR: It's not that long. This one is not that long.

MR. POTCHEN: We gave you our copy.

[53] THE COURT: Okay. Why don't you read them into the record.

MS. STANYAR: Well, actually, it's seven pages.

THE COURT: Go for it.

MS. STANYAR: Okay.

THE COURT: Go for it. We have a lot of people here, they won't get a chance to see it –

MS. STANYAR: I know, exactly.

THE COURT: And they should know what the stipulation is. Seven pages isn't bad.

MS. STANYAR: Okay.

THE COURT: Read it into the record. You can read over her shoulder, she won't mind.

MS. STANYAR: The parties and their respective attorneys stipulate to the following facts in lieu of the adult plaintiffs testifying at trial.

Plaintiffs are an unmarried same-sex couple residing in Hazel Park, number one.

Number Two, plaintiffs had a commitment ceremony in 2007. They have lived together for the past eight years and jointly own their own residence.

Number Three, Deboer is a nurse in the neo-intensive care unit at Hutzel Hospital, and Rowse is an emergency room nurse at Henry Ford Hospital both located in Detroit.

[54] Number Four, in November of 2009, Rowse, as a single person legally adopted child "N." Thereafter also as a single person she legally adopted child "J."

Number Five, in April of 2011, Deboer as a single person adopted child "R."

Number Six, "R" and "J" were and are "special needs children.

And just a footnote to that, "R" has required physical therapy for delays in her growth motor skills. "J" requires occupational and physical therapy for his many medical complications. Rowse and Deboer have shared in the responsibility of caring for "J's" continuing special needs and for "R's" need for physical therapy with both of them rotating and bringing the children to their various medical appointments,

physical and occupational therapy appointments. Both Rowse and Deboer share in carrying out the children's prescribed therapies in their home.

Number Seven, before the adoption of the children the State of Michigan licensed the adult plaintiffs' home as a foster home and approved both adult plaintiffs as care givers for the children.

Number Eight, before Rowse and Deboer could adopt any of the children, A, they had to petition the circuit court for permission to adopt.

B, both Rowse and Deboer were interviewed [55] extensively for each adoption.

C, both were screened by the State for criminal history and through the Department of Human Services for any history of abuse or neglect.

D, an assessment was conducted through the county where the adoptions were to take place.

E, their home was inspected.

F, a temporary placement of each child was made in their home.

G, they were monitored by the state in their home with visits by social workers and in "J's" case nurses.

H, a determination was made by the circuit court of applicable jurisdiction that they were suitable parents and that in each case the child being adopted

was being properly cared for while in a temporary placement.

As to two of their children, "R" and "N" at the time of the adoption the circuit court also had to make "the best interesting of findings" in order terminate the rights of the birth parents.

Number Nine, Deboer and Rowse are responsible and caring parents who are providing a stable and loving home for their children.

Number Ten, in the absence of a legal document granting decision-making authority and because their children have many special needs, it continues to be [56] problematic for Rowse and Deboer that Rowse is not recognized as "R's" parent by medical personnel and other care givers, and that Deboer is not recognized as "J" and "N's" parent. This is a recurring issue as they approach each new treating facility or care giver as Deboer is unable to accompany "R" or if Rowse is unable to accompany "J" and "N."

This is especially true with unexpected emergency medical situations where time is of the essence and decisions have to be made quickly.

Number 11, Deboer cannot cover Rowse's sons, "M" and "J" on her insurance. She would have to buy insurance for them.

Number 12, Rowse and Deboer have been advised that if Deboer were to die while the children are still minors Rowse would be treated as an unrelated adult to "R" in the eyes of Michigan's legal system.

She would have to start from scratch to be either their foster or adoptive parent. She has been advised that she would have no legal right to visitation or custody of "R" without pursuing legal action.

Rowse and Deboer have also been advised if Rowse were to die while the children were still minors, Deboer would be treated as an unrelated adult to "J" and "N" in the eyes of Michigan's legal system, and she would have to [57] start from scratch to either be their foster or adoptive parent.

She's been advised that she would have no legal rights to visitation or custody of "J" and "N" without pursuing legal action.

Number 13, Deboer and Rowse have been further advised that if Deboer dies without a will "N" and "J" have no legal rights to inheritance, and if Rowse dies without a will "R" has no legal rights to inheritance.

Number 14, it is Deboer and Rowse's understanding that if Deboer dies or becomes disabled, "N" and "J" are not eligible for social security benefits through her, and if Rowse dies "R" is not eligible for social security benefits through her.

Number 15, Deboer and Rowse have also been advised that if they separated as a couple under Michigan Deboer would have no automatic lawful right to custody or even visitation for "N" and "J," and Rowse would have no automatic lawful right to custody or even visitation for "R."

Number 16, the fact that Deboer currently has no legal relationship over "R" and that Rowse currently has no legal relationship over "N" and "J" creates stress and anxiety in their lives, and they believe it creates risks and instability to their children.

[58] Number 17, if they were legally able to do so, Rowse and Deboer would marry each other in the State of Michigan.

It is so stipulated, signed by the parties.

THE COURT: Correct, counsel?

MS. HEYSE: Yes, that is correct.

THE COURT: And what exhibit is it, please?

MS. STANYAR: Exhibit Number 53 and we'll make sure everybody has a copy.

THE COURT: Exhibit 53 will be admitted. The Court will accept those stipulations of fact, and considering the facts in this matter.

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[93] [Ms. Nessel] Q. Okay. So now, what is your understanding of how these three children came to be in the custody of our plaintiffs, April DeBoer and Jayne Rowse?

[Vivek S. Sankaran, Esq.] A. It's my understanding, is that all three children had immense special needs, and really entered life with sort of a,

a tragic hand dealt to them with parents who were unable to take care of them.

Two of the children were adopted through a private adoption, where the Department of Human Services wasn't involved. One of the children was adopted through the foster care system.

My understanding is that both plaintiffs are licensed foster parents who have done just a tremendous job with kids who, ordinarily, the system would have problems finding someone to take care of them.

* * *

[124] BY MS. NESSEL:

Q. All right. Now, you've been qualified as an expert as it relates to your knowledge of the foster care system. What can you tell the Court as it relates for the need for qualified parents who want to adopt a foster child in the state?

A. There is a pretty significant need based on the high number of kids we have in foster care. We have roughly just under 14,000 kids in foster care.

The latest statistics that I saw is of those under 14,000 children in foster care, roughly 3,500 kids are children that we refer to as legal orphans, kids whose, the rights of the parents have been terminated, but they don't have – they haven't achieved permanency through adoption. The latest statistics that I reviewed, I believe in 2012, was that over 800 children aged out of our foster care system.

What's particularly troubling, is that that number has [125] risen from a little over 500 children, back in 2005, to a little over 800 children now of kids aging out of foster care at a time when our foster care population itself has declined significantly in the state of Michigan.

So for whatever reason, we are leaving these children, an increasing number of children without a permanent home, more than we've had in the past.

Q. Okay. And what are the prospects for these children that you're talking about, the ones that age out of foster care without any permanent homes?

* * *

[126] BY MS. NESSEL:

Q. Now, do you believe, Professor Sankaran, that the Michigan Adoption Code provides disincentives for same-sex couples to adopt?

A. I do.

MR. POTCHEN: I'm going to object to this fact. When I asked him directly, are you going to give any opinions on Michigan's rationale for same-sex – for second-parent adoptions.

THE COURT: He said no. He hasn't gotten into that area.

MS. NESSEL: Well, that's what I'm specifically asking, if there are any disincentives for same-sex couples to adopt based on the construct of the Adoption Code.

THE COURT: He's already answered the question. He said yes.

BY MS. NESSEL:

Q. Okay. All right. Can you tell us why?

A. Yes. Because it leaves the one parent in the relationship [127] without any legal right to the child.

Q. All right.

A. There's only one parent, one of the parents can adopt.

Q. And can you tell us whether there are any specific challenges involving in, say, placing special needs kids, like the ones that April and Jayne have taken in, those kinds of kids, are there any special challenges placing them in the foster care system into permanent homes?

A. Yes.

THE COURT: Permanent homes. Go on.

THE WITNESS: This is a challenge that we confront in the system every day, with kids with special needs, like the three that are placed with, with the plaintiffs in this case, but also of older youth in foster care. It's, it's something that we struggle with in our system. We can't find enough homes for kids who are older, particularly kids of color.

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[131] BY MS. NESSEL:

Q. Okay. So now based on your assessment of the issues in this case, have you formed any general conclusions as it pertains to these issues?

A. I have. So I think that my opinion is that the current law that exists and which I think imposes a barrier on the, the pool of adoptive applicants is really hurting kids in Michigan, particularly kids that I focus oh, kids in foster care. And I also have the opinion that, that other mechanisms like guardianships or wills don't provide the stability of permanency for kids that, that an adoption could provide, which then increases the likelihood of insecurity, instability and impermanency for children.

MS. NESSEL: All right. Thank you, very much, your Honor.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs,

-v-

RICHARD SNYDER, ET. AL.,

Defendants. /

Case Number: 12-10285

VOLUME 3

BENCH TRIAL
BEFORE THE HONORABLE
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
THURSDAY, FEBRUARY 27TH, 2014

APPEARANCES:

For the Plaintiffs:	**Carole M. Stanyar, Esq.** **Dana M. Nessel, Esq.** **Kenneth Mogill, Esq.** **Robert Sedler, Esq.**
For the Defendants: **Richard Snyder,** **Bill Schuette,**	**Tonya C. Jeter, Esq.** **Kristin M. Heyse, Esq.** **Joseph E. Potchen, Esq.**
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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

* * *

[19] BY MS. NESSEL:

Q I'm going to show you what's been marked as Plaintiffs' Proposed Exhibit 301. Can you tell me if this is an accurate representation of all the studies that you relied upon in order to form your opinions that you're willing to testify about in court?

[Gary Gates] A Yes, it is.

MS. NESSEL: Your Honor, I'd ask that Plaintiffs' Proposed Exhibit 301 be entered into evidence.

THE COURT: Any objection?

MS. BRYA: Your Honor, we don't have a copy of that exhibit at all.

THE COURT: Do you have an extra copy?

MS. NESSEL: Certainly, your Honor.

MS. BRYA: If I can just have a minute to take a look at it?

THE COURT: Absolutely. Take a look.

MS. BRYA: I don't have any objection, your Honor.

THE COURT: It will received.

(Plaintiffs' Exhibit 301 received into evidence.)

BY MS. NESSEL:

Q All right. Doctor Gates, let us talk about some of the findings that you made as it pertains to the area of LGBT [20] demographics. Now, were you able to determine the number of people in the United States who identify as LGBT?

A Yes, through some work I did with the Gallup Organization. Those data that they collected found that it would be an estimated about 8.3 million – it's actually adult Americans self-identified themselves as lesbian, gay, bisexual or trans gender.

Q Okay. In your work were you able to identify what percentage of the overall population in the United States identify as being gay, lesbian, or bisexual?

A This is showing actually two different studies by the University of Chicago over a 20-year time period. They – you see that in both men and women there's been an increase in the portion of adults who self-identify as – in this case it's lesbian, gay or bisexual. So it was 1.1 percent of women in '92. It's now 3 – as of 2012, in a similar survey it was 3.4 percent. For men it went from 2.5 percent to 4 percent.

Q Okay. And were you able to make a similar determination in regard to the number of people in the State of Michigan that identify as LGBT?

A Yes. So, this is again – now the Gallup data that I worked with which the estimate from those data would imply that there are about 287,000 adults in Michigan who identify as LGBT.

[21] Q Okay. And you said that was for 2012?

A 2012, I'm sorry, yes.

Q Okay. And, Dr. Gates, is there any census data that gives us information regarding the number of people who have identified themselves as having formed a same-sex couple in the United States?

A Yes. Since 1990, on the U.S. decennial census there's been a way that you can identify same-sex cohabiting couples who are not simply roommates, who identify themselves as spouses or partners.

In 1990, it's actually only those who were partners, it was about 145,000 same-sex couples were identified. In 2000, this would be couples who identified as both spouses and partners, it was more than 358,000. And by 2010, it was nearly 650,000 same-sex couples.

Q Okay. And you're competent in the accuracy of these figures?

A Yes.

Q Okay. Now, let's focus on the State of Michigan. Is there census data that would give us information regarding the number of people who identified themselves as having formed same-sex couple here in the State of Michigan?

A Yes. So, again, drawing from those same decennial census sources in 1990, the census reported almost 3400 same-sex couples in Michigan. In 2000, it was 7,300 same-[22]sex couples. And in the latest census, 2010, it was almost 14,600 same-sex couples.

Q All right. May I ask you: Have you ever been criticized as being too conservative in your overall numbers?

A Yes, in general it's a very common – probably the biggest single critique of my work is those who believe that most of these surveys are actually undercounting and that reporting that is not taking into account the possibility that some people may be uncomfortable identifying either or LGBT, or identifying as part of a same-sex couple. So I'm fairly regularly criticized for that.

Q I mean, when you talk about obtaining these figures, of course, you say this is self-identified; correct?

A That's correct. So, you know, it's – in the case of couples you've identified someone, another adult in your household as being the same-sex as you and also as being either your spouse or your unmarried partner. So that's a self-identification.

And in the case of most other surveys the question is something aligned of "do you consider yourself to be" and you choose an option that would be gay, lesbian, bisexual or trans gender.

* * *

[28] BY MS. NESSEL:

Q. Okay. Let's talk about the number of gay, lesbian and bisexual people and same-sex couples who are raising children. Have you analyzed data which would allow you to [29] determine the number of LGBT people raising people in the United States?

A Yes, so there are several surveys that simply ask whether you've had a child in your life. Based on those surveys the estimate that there are about 3 million LGBT Americans who have ever had a child.

Via the census bureau data we can look at the portion of same-sex couples so again these are couples who either identified as spouses or partners who have children under age 18 in their home. That portion is – more than 19 percent are raising children under age 18 in the home. That would imply that there an estimated 200,020 children under age 18 who are being raised by same-sex couples.

Q Are these numbers specific to states that have marriage equality laws and –

A No, these are figures for the nation. So this would be a cross –

Q So this includes every state in the nation.

A Correct.

Q Okay. Have you also analyzed the same data for the State of Michigan?

A Yes. So a similar analysis in Michigan this is based on Census 2010 data would find that there are about 20 – 2,650 same-sex couples in Michigan who are raising approximately 5300 children who are under age 18.

[30] Q Okay. Now, Dr. Gates have you analyzed specific data that indicates the willingness of lesbian and bisexual women to adopt children or to foster children in relation or compared to heterosexual women?

A Yes. So the federal government conducts a survey called the National Survey of Family Growth in which women – unfortunately they don't ask these questions of men, but women are asked whether they have considered adopting. And you also know the sex orientation identity of women. In both the 2002 version of that survey and in the 2006 through 2010 version lesbian and bisexual women were much more likely than heterosexual identified women to say that they had considered adoption. So in 2002, it was 46 percent versus 32 percent. And in the latter survey it was 48 percent versus 36 percent.

Q What about just lesbian women?

A So if you look, only lesbian identified women it was slightly higher. More than half of lesbians said they were willing to consider adopting a child again compared to about 36 percent of heterosexual women.

Q Okay. And you indicated there's no such similar survey that indicates the contrasting bisexual men with heterosexual men?

A They surveyed men in the survey but they don't ask this question of them.

[31] Q Okay. Do you know of any studies, Dr. Gates, and if so, have you utilized any studies in forming conclusions about the number of same-sex couples who have adopted a child in the United States compared to the number of heterosexual or opposite sex couples who have adopted a child in the U.S.?

A Yes. So, again in the census data you can measure whether a child in a household is identified as an adopted child. And among couples with children, 14 percent of same-sex couples have – one of those children is identified as an adopted child versus 3 percent of opposite sex couples.

And in Michigan it's about 11 percent of same-sex couples with children include an adopted child versus 4 percent of opposite sex couples.

Q And do you know of any studies that indicate the number of same-sex couples that are raising foster children in the United States?

A Yes. So nationally same-sex couples are twice as likely as their opposite sex couple counterparts to be raising a foster child.

* * *

[32] Q Okay. Do you know if there is a difference in the number of children adopted in states where the adoption policies permit both partners in a same-sex couple to be legal parents first in states that have restrictions or bans on same-sex couples both adopting like those here in Michigan?

A Yes. So, again I used census bureau data. It's called the American Community Survey from 2012. I separated the country into three groups. The states those where second parent adoption is by state law or regulation made available to all same-sex couples. States where there's a specific provision that such second parent adoptions are not available to same-sex couples statewide. And then the largest group of states actually doesn't specify one way or another. What you see is that in the states that permit second parent adoption for same-sex couples there's a much higher portion of the same-sex couples with children have adopted children, 18 percent compared to, for instance, the states that have – that do not permit second parent adoption at all, the figure is only 7 percent.

Q Like the State of Michigan would fit in the third category then.

[33] A Michigan would have been one of the states in the third category, yes.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs, **Case No. 12-10285**

-v-

RICHARD SNYDER, ET. AL.,

Defendants. /

VOLUME 4

BENCH TRIAL
BEFORE THE HONORABLE
BERNARD A. FRIEDMAN
United States District Judge
100 U.S. Courthouse & Federal Building
231 West Lafayette Boulevard
Detroit, Michigan
Friday, February 28, 2014

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[8] [Nancy F. Cott, Ph.D.] A. In, in my two major lecture courses, one of which covers the history of sexuality over 400 years, and another, which is a 20th century course on, essentially on gender relations in the 20th century in the United States.

[Mr. Mogill] Q. And is it the name of that course?

A. It's called Men and Women in Public and Private.

* * *

[12] [Nancy F. Cott, Ph.D.] A. . . . And I thought this was a very interesting set of questions; how marriage, as a public institution authorized by the state had, had great deal of impact on the roles of men and women. And that's what led me to it.

[Mr. Mogill] Q. How much time did you spend researching before publishing "Public Vows"?

A. It took me about ten years to research and write the book.

Q. And the name is an interesting name. How did you come by the name, the title, "Public Vows"?

A. Well, in my titles, I like paradoxes. One of my earlier books was called "The Bonds of Womanhood," which had a double meaning. Another one was also had a double meaning.

And in "Public Vows," I meant the double aspect of marriage, that it is a public institution authorized by the state, and it is a set of vows that a couple makes to one another in public; that's required. They have to have witnesses. So they vow to each other publicly. But also, what marriage means in that it is a legal relationship, is that the public, the state, vows to guarantee the couple's bond. The state will protect that set of vows they make to each other.

Q. Which leads to my next question, and that is what are the attributes of marriage?

A. I would describe marriage as a civilly authorized public institution, which is both a contract, a civil contract made by two parties to one another by free consent. Yet, at the time [13] that contract is jcined, it also becomes a legal status, because the state has certain requirements for eligibility in licensing marriage, and also has – places certain obligations upon the partners who agree to marry.

Q. What are the purposes of marriage?

A. Well, in answering that question, I would answer it from the point of view of the public or the state. What are the state's interests or purposes in

marriage, since that is what is relevant here, it seems to me. And they are many.

Marriage, overall, is a complex institution, and has – can be looked at from many aspects: Legal, economic, political, and of course personal. But from the point of view of the state's interest, marriage has the purpose of regulation of governance. It creates social order in the population by having recognized marital couples and households they form.

It is, it is very important as an economic institution, in that the couple are obligated to support one another and any dependents that they have. And that is an economic benefit to the state and to society. A marriage creates a legal relationship between the couple and their children, an automatic legal relationship.

And in, in the point of view of nation states, marriage has been important, and regulations on marriage have been crucial in forming the populus who compose the people of a nation.

[14] Q. Could you expand on that last one, a little bit, please?

A. Well, it's, it's very striking in the history of the United States that there have been discriminatory laws about marriage that have, at past times, that have been intended to describe who are the desirable people to compose the United States.

For instance, there were laws in over 40 of the states and territories, at least some period in their

history, that prevented a white person from marrying a black person, or in many states an Asian person or a Native-American person. And those laws were, of course, dictated by people's notions of race, but, but also notions of who should be – what kinds of person should populate the United States.

Q. Thank you. Professor, is the capacity or desire to procreate or adopt a requirement of marriage?

A. No.

Q. Has it been in the past?

A. No. No. There are no marriage laws of which I'm aware, and I've looked at a lot, in the history of the United States that put any requirement to bear children.

Q. Are there examples of who is eligible to marry, who is unable to procreate that you can use to illustrate this point?

A. Well, there have never been later age barriers on marriage, that is, women past menopause are free to marry. There have never been laws that prevent someone who might be known to be sterile from marrying. And so those, I would say, are the, are [15] the best examples.

You can also look at divorce law, where inability to have a child has not been a ground of divorce in any state, including Michigan.

Q. Thank you. By the way, with respect to sterility, is there a famous historical example?

A. Yes. I like to cite the fact that George Washington, who was, of course, called the father of our country, was known by most people to be sterile, because his wife, Martha Custis had been married earlier, and she had borne two children by her prior marriage. Yet, when George and Martha were married for quite a long time, they had no children. She was young enough. She was quite young when they married. And so this was known.

And in fact, he mentioned, was going to mention it in his inaugural speech. He crossed that line out, but his earlier drafts are known. And in fact, it was an advantage to him, because that way, people wouldn't fear that he would try to have a hereditary presidency.

But it's interesting to think about as a model for a non-biological family as our First Family, in that George and Martha reared her children and then also reared her grandchild, because her son was killed in the Revolutionary War and had a young child. And they brought that child into the family and reared that child.

Q. Thank you. Professor, is there any particular level of [16] parenting competency that is a requirement for one to be eligible to marry?

A. No.

Q. Is there any particular test for a division of parental roles that's a requirement of eligibility to marry?

A. No requirement at all. Although, for a long period of our history, there were different roles in the economic sphere required of husband and wife by law, not to enter marriage, but once marriage was joined.

Q. Is sexual intimacy, that is a conjugal relationship, a requirement for a valid marriage?

A. No. No. In fact, the state – I mean, this is true historically and today. The state does not enter the private relationships within a marriage. It's considered – marriage is another of its paradoxes, that it creates the private arena, while it is a public institution. But the state doesn't enter, except in cases of abuse or violence.

Q. Thank you. What, if anything, is the state's interest in allowing or encouraging marriages between people who will not have children?

MS. BRYA: Your Honor?

THE COURT: I'm sorry. Go on. I didn't hear the last part of the question. What is the state's?

MR. MOGILL: Interest.

THE COURT: Don't answer, Professor. I just want to [17] hear the question.

MR. MOGILL: What, if anything, is the state's interest in allowing or encouraging marriages between people who will not have children.

MS. BRYA: And, your Honor, I was going to object as it calls for speculation.

THE COURT: She may answer. I think it's within her expertise.

Go on.

THE WITNESS: Well, the, the items I mentioned before, the economic and social order, advantages and purposes of marriage, obtain certainly for couples who do not have children, particularly the requirement of the state that the couple support one another. This is absolutely in the state's interests, and part of the state's purpose in licensing marriage.

BY MR. MOGILL:

Q. Is there a particular historic occurrence that you can point to, when non-procreated marriages between people capable of bearing children became markedly more common and publicly acknowledged?

A. Well, I would, I would locate that with the growing availability of contraception in the 1920's. That at that time, because condoms were available for so-called hygienic purposes, they became much more widely used by married and [18] probably unmarried couples.

But for marriage, it was seen as a great watershed. And at the time, it was a matter of tremendous

controversy. In fact, there were those who called it a marriage crises and felt that contraception would destroy marriage.

On the other hand, most people greatly welcomed it because it obviated the problem of unwanted children and too many pregnancies that endangered women's and often babies' health. So at that time, non-procreated marriages were already a recognized type. And the possibility that couples could decide for themselves whether their marriage would produce children or not produce children, that was a great watershed.

Q. Thank you. Within, within marriage, historically, who bears responsibility for the children born of or adopted into the family?

A. Well, in, in most of the past, it was the man who was the household head, at a time when marital roles were asymmetrical and hierarchical, that is the husband and wife had different roles assigned by law, and the husband had the higher role and was the representative and provider for the family.

So that was the case for many hundreds of years. Since the equalizing of rights between men and women in the 20th century, and particularly since the 1970's, now both members of a couple, a spousal couple, are responsible for their dependents.

[19] Q. Is there a specific public purpose or purpose – are there specific public purposes for this responsibility?

A. Well, it is about economic provision. It is that part of marriage to prevent the state from having to be responsible for people who are not capable of providing for themselves, not only minors, but historically marriage has been very important for creating households in which the elderly can be cared for.

Q. Thank you. Now, you've already talked a little bit about marriage as being regulated by civil authorities. How long has that been the, been the case in the United States?

A. Marriage has always been a civil arrangement in the United States. Some of the original colonies, most of them authorized marriage by civil law. Only one or two actually authorized a religious authorization.

And that latter example, this appeared at the time of the founding of all of the states, for a number of reasons. Of breaking away from England, and also because there were numerous religions in the United States. That while there are multiple religious understandings of marriage, nonetheless what was valid marriage was a civil arrangement, authorized by law.

And one of the earliest spokesmen to talk about why this was, was among a population that we think of as really motivated by religion, that is among the Puritans.

William Bradford, who was the first governor of the Plymouth colony, the group that was founded after Plymouth Rock [20] was sighted, he said that

their distinction from England, which had a Church of England marriage, their distinction from England was because marriage was a civil thing on which much property depends. And that both expresses the original point of this, of being civil, and also its important economic dimension, its ruling economic dimension from the 1600's.

Q. Thank you. In fact, in your preparation for testifying here today, have you looked at Michigan's statutes with respect to marriage, to determine whether a marriage is described in Michigan law as a civil contract?

A. It certainly is, yes, a civil contract.

Q. So just to be clear, who has the authority to regulate marriage in the United States?

A. The civil law, the legislators and courts.

Q. And what aspects of marriage are regulated by the state?

A. Eligibility, and requirements or obligations. Also, rights. I think that covers the waterfront.

Q. All right. In Michigan –

A. Oh, also who can perform a marriage.

Q. Okay.

A. Ceremonies have to be.

Q. In Michigan and other states, is marriage given special recognition in the law, including as to

providing economic benefits as a result of the status of being married?

MS. BRYA: Your Honor, I'm going to object to this [21] question, as it calls for a legal conclusion, I believe. And Dr. Cott hasn't been qualified as a legal expert.

THE COURT: You want it in the non-legal sense?

MR. MOGILL: Absolutely. Yes.

THE COURT: The historical?

MR. MOGILL: That's correct, Judge.

THE WITNESS: Could you repeat the question, please?

BY MR. MOGILL:

Q. Yes. In Michigan and other states, is marriage given special recognition in the law, including as to providing economic benefits as a result of the status of being married?

A. Very definitely. And it's a major reason why people marry, for the spousal benefits that marriage brings along with it.

For instance, the ability for a spouse to inherit, you know, for a widow or to inherit the estate without taxes, the being, being authorized to take retirement benefits. If one spouse dies, the other spouse can take

them or death benefits for instance from workers' comp.

There are many coordinate ways, including at the Federal level, of course, Social Security benefits goes with the spouse, survivor's benefits for veteran's benefits. These are all tied up in marital, a marital arrangement.

Q. Thank you. Now, we talked a little bit about interplay or about the question of religion.

What, if anything, is the role of religious [22] authorities with respect to marriage in the United States?

A. Well, religious authorities have always been free to exercise their aims and demands in crediting marriage of their congregants. And so certainly civil authorities have typically recognized the importance of religion as the way many people may understand their marriage. But religious authorities have, while free to say what is right for people of their religion or of a given congregation, they have never had the power to make a valid marriage.

They can perform marriage ceremonies, but the validity of a marriage performed in a church or synagogue or other religious institution is only because – is only because the clerical authority has been loaned the state authority. And the state has relied on clerics and trusted them to perform marriage vows.

Q. So with respect to the legal authority, the only – is it correct that what you're saying is that

religious figures officiating it, marriages, are acting only as agents of the civil authorities?

A. Exactly. Deputies of civil authority.

Q. If a particular religious denomination chooses to impose additional requirements beyond those in the law, before it will accredit a marriage within the denomination, can those requirements in any way affect the validity of a marriage that complies with the requirements of the law?

[23] A. No.

Q. Would a change in the law, allowing same-sex couples to marry, in any way obstruct or otherwise interfere with any religious denomination's ability to impose additional requirements for recognizing or blessing a marriage within its particular denomination?

MS. BRYA: Your Honor, I'm going to object to this question again. It's calling for a legal conclusion, and Dr. Cott hasn't been qualified as a legal expert.

MR. MOGILL: Again, in the non – in a historical, non-legal sense.

THE COURT: In a historical sense.

THE WITNESS: No. It's clear that religious authorities are free to impose their own requirements for people whom they marry. This has been so for many, many years.

Catholic churches, they don't approve of divorce. Then don't believe in divorce. The states allow divorce. And it's up to a Catholic cleric to decide whether or not to marry someone. If that, the couple looks like they are likely to divorce, they can refuse to marry that couple.

BY MR. MOGILL:

Q. Thank you. Professor, the State defendants in this case are arguing, among their various arguments, that Michigan's ban on same-sex marriage is justified because it's in keeping with the traditional notion of marriage. From the perspective of a [24] historian, can you comment on this claim?

A. I think that it is – it risks a lot of vagueness and misguidedness, actually, to speak of traditional marriage, in that, and as I mentioned at the outset, marriage is a complex institution that has many aspects.

And perhaps more importantly, what has characterized marriage through the U.S., through American history, is both the retention of certain traditions and a great deal of change.

And the extent to which marriage has changed, in some of its fundamental elements, over the history of this country and the state of Michigan, suggest that saying traditional is gesturing to something that is a moving target.

Q. Thank you. Can you identify specific key changes in the institution of marriage, over the

course of American history, that reflect this process of change?

A. Well, I think three areas are particularly illustrative. One would be the relationship between husband and wife. Another would be the role of racial considerations in eligibility and judgments of marriage. And then a third would be in divorce.

Q. Okay. Why don't we take those three in order.

A. Okay.

Q. With respect to changes in the relationship between spouses.

A. This is probably the area of greatest and most fundamental [25] change, in that marriage in the common law, which preceded American law, was a profoundly asymmetrical institution. And –

Q. If I can interrupt you for a second.

A. Yes.

Q. If you could describe for the Court what you mean by asymmetrical.

A. Oh, certainly. That is the roles of the two spouses were not the same. They were actually quite different. They were seen as complementary and marriage itself was seen as a bargain that put these two sets of requirements together to create a household with the appropriate division of labor and of stability.

And the husband was required to provide for his wife and all their dependents, whether those were biological children or other dependents, including servants, slaves, orphans they might take in, other relatives. Whereas the wife was commanded to serve her husband with her labor and to obey him in terms of his commands. And the husband had a strong set of responsibilities. They were enforced by law in all the American states once the nation was started.

But before that, initially he, actually for quite a few years, he got the, the privilege of representing his wife. Her identity was buried in his. That is why Jane Roe became Mrs. William Doe. She became part of William Doe. And you see [26] what I mean by asymmetry. She, she could not represent herself legally or economically. She could not make a contract, she could not collect a debt. She could not sue in court. She could not sign her own will, in fact, without him joining her in any of those things. And this was meant for marital harmony, that the two were one.

So over the years, this began to clash with the ways the American economy was developing. Wives assets were controlled in a variety of ways in order to keep them in the husband's side of the bargain.

At any rate, over a very long period of time, these rules clashed with emerging realities, and legislatures and courts began to change them. It did take a very long time.

It wasn't until, well, by about 1900, most wives could act as economic actors. They could own property, they could keep their wages. But there were many other features of this marital doctrine of unity, which was called coverture, that persisted.

Q. And if you could spell coverture, for the record, please.

A. Oh, sure. C-O-V-E-R-T-U-R-E. It's the old French that was the Norman French that infected the common law because of the Norman conquest. And it really meant, though, covert; that the wife's independence and individuality was covered by that of her husband.

It took a long time for the wife to be able to emerge [27] as a legal and economic individual. Certainly, in Michigan there were important changes in the law in the 19 teens that gave wives a great deal more of individuality, but nothing like total independence. And that wasn't really achieved until the 1960's with another change that did abolish the features of coverture. So –

Q. Was that in the Michigan Constitution of 1963?

A. I believe so. I know 1963 is the date. And, yes, I believe it was a constitutional change.

This was, for people who understood marriage in the 19th century, coverture was essential, it was fundamental. Marital unity was what marriage was. And there were many opponents to this change. The

only way it happened, really, was that it took a very long time.

And so the emergence of wives to full individuality which nationally happened with the Women's Rights revolution of 1970's, this was a fundamental change in marriage. And states, and then Supreme Court decisions also changed marriage at the state and the federal level to be a contract in which the roles of the two spouses were no longer asymmetrical or different.

But I think both of these characteristics of the former nature of marriage are important, that wasn't simply that they were different, the two roles. It's that they were hierarchical. And one gave a lot more credibility, presence, ability, leverage, et cetera, that is to the husband, than the [28] wife had. She was clearly subordinated in this relationship, as much as it might have been claimed to be complementary. Of course, a subordinate and a superordinate can be quite complementary to one another. But that was vastly overhauled in the middle and later part of the 20th century, so that states and the nation now do not prescribe different roles for couples.

And if I can just skip to divorce, although it was the third. Let me just say a few things about --

Q. It's okay. Now we're making it the second instead of the third.

A. Okay. Yeah. I think that certain parts of the evolution of divorce emphasize the way in which by

the mid and especially the mid 20th century, I was going to say, and particularly by the '70s and '80s, that the state has stepped out of prescribing how a couple enact their marriage, in that divorce, which was available in all the American states by not so long after the American Revolution, but for very, very few causes, adultery, desertion, divorce grounds gradually began to be expanded during the 19th century and into the early 20th century. And this greatly changed marriage, I think, anyone looking at it would say that if one did not think one was yoked for life, necessarily, and one could divorce without great castigation from the society, that it made marriage a different experience. So there's that long-term change.

* * *

[53] BY MS. BRYA:

Q. Line 23, the question is:

"Do you agree that, at least in part, the incentive given by the State for marriage were to create stable and [54] enduring unions between couples who have the capacity to procreate, so they would support one another and any children created by them?

Answer: Yes, in part, certainly."

A. Okay. "In part" was crucial in that sentence.

Q. You believe that the institution of marriage has lasted because it has been flexible over time, correct?

[Nancy F. Cott, Ph.D.] A. Yes.

Q. In Michigan, however, marriage is only – has always been defined as between one man and one woman; is that correct?

A. Yes. Well, I don't think it was actually defined before 1996 as such, but it was understood to be that.

Q. You don't believe a biological connection between parents and children is irrelevant to a child's well-being, do you?

A. It could be irrelevant. There's so many natural parents who abuse their children. Sometimes it's a disadvantage.

Q. Professor, I'd like to call your attention to your deposition testimony on page 107, line 18.

The question was, "Do you think a biological connection between parents and children is irrelevant to the social well-being of children?"

The answer: "No, I would never say it's irrelevant."

A. But as I – you're taking that out of context, because my comment there was, went on to say that's a general question and the issue is what states were interested in, in marriage.

[55] Q. You agree that different sexes bring different contributions to parenting, correct?

A. It looks that way, yes, from social science, psychological.

Q. And you agree that there are different benefits to mothering versus fathering, correct?

A. There may be. I, I am not a psychological expert.

Q. In your opinion, you agree that there are different benefits to mothering versus fathering?

A. Very likely.

* * *

[58] [Nancy F. Cott, Ph.D.] A. . . . And the truth is, too, just with respect to procreation, that historically and today, states have always made unmarried parents responsible for the children they [59] procreate. So the state's interest in economic stability in order in keeping people off the public dole extends to unmarried parents of biological children. But it is more inclusive when we're talking about marriage and the marital household. And that's one way in which it has been seen as a lynchpin of social order more generally, and a more extensive economic benefit to the society at large.

[Mr. Mogill] Q. Would it be fair to say then, that with respect to the interest of the state in procreation, that it is linked not to an obligation or even expectation that a particular couple will attempt to procreate, but to the economic consequences for the couple and society in the event of procreation?

A. Yes. I think certainly in the history of marriage law, that supporting children has been very central, but actually bearing them has been pretty much invisible.

Q. The last question I want to ask you goes to a question that you were asked about mothers and fathers bringing different attributes.

Again, is there anything in the law of marriage in Michigan or any other state now, or in the past, that imposes a gender role obligation with respect to parenting any children in that household?

A. No. In fact, this has been – you can see this in divorce law, for instance, since the state doesn't require anything in particular inside a marriage, you can see the state's [60] expectations better when a marriage breaks up.

And while in the longer past when a marriage broke up, typically the father was actually the guardian and the provider for the children, the mother got nothing with respect to the children several hundred years ago. And then during the 19th century, it kind of divided with ideas that, well, the mother perhaps should be given the custody of very young children, and the father is still the provider.

But now, both parents are equally responsible for both care of the children and economic support of them. So that is the starting point for divorce negotiations about custody and payment.

I was going to say one other thing. Oh, yeah. At the time that I wrote my book, "Public Vows," during the '90s, I was most interested in the ways in which marriage historically had shaped male and female gender roles. It was a major interest of mine when I wrote the book. And one could see that historically it had dictated a great deal about what men were supposed to be and what women were supposed to be.

But in the past 20 years or so, and actually since the '70s, one could say that the law has not dictated particular roles to a man and woman as husband and wife. And so the, the centrality of that to the way marriage works in society and for the state has really dropped out, so that marriage is still a freely chosen contractual partnership, that is about mutual [61] support in an emotional way, as well as economic way, and support for dependents, and one that is more, and more freely chosen and no bars to eligibility of the sorts that were judged discriminatory.

So that the relationship of marriage to gender has, has been on a historical trajectory toward a kind of neutrality toward that formation. There are certainly plenty of avenues in our society that reiterate differences between men and women. Most all of them do. But marriage as a, as a valid civil contract does not, actually, in the law or in its requirements.

Q. And just by way of illustration, it's correct, is it not, that there is nothing whatever in marriage that creates either a requirement or even an expectation as to who is going to do the laundry, who is going

to cook or shop or do the dishes, change the diapers, take out the garbage, fix a broken lamp or anything else; is that correct?

A. That is absolutely right. Nobody applying for a marriage license has ever been asked about what roles the two parties will take on.

MR. MOGILL: If I could just have one second, please, Judge.

THE COURT: Of course.

MR. MOGILL: No further questions.

* * *

[64] MR. MOGILL: Yeah. As of the time we broke yesterday, the Court had wanted to take a look at both our proposed exhibit, the report of the Michigan Department of Civil Rights.

THE COURT: Yes.

MR. MOGILL: On LGBT inclusion.

THE COURT: I have looked at that one.

MR. MOGILL: And it's my understanding there was an objection to relevancy that we're prepared to address, if the Court has any concerns.

And similar, a objection had been raised with respect to the testimony, the, excuse me, the admission of the report of Professor Chauncey in lieu of his live testimony.

THE COURT: I did know there was – I thought it was stipulated that everybody stipulated to his reports. I'm sorry.

MS. HEYSE: We, we did stipulate to its admission, your Honor, but we still believe it's not relevant to these proceedings. So we would like to at least preserve that argument.

THE COURT: But had Professor Chauncey come and testified, you would have objected to the relevancy of his testimony, but not to his credentials or what he had to say?

MS. HEYSE: Correct, your Honor.

THE COURT: Since he was unavailable, through no fault [65] of his own, I know he was supposed to be here, I will accept the reports. And I really read it last night, so I can't say I didn't read that report. And I will consider relevancy in rendering my opinion.

MS. HEYSE: Thank you, your Honor.

THE COURT: And your objection is noted and preserved.

MR. MOGILL: With respect to –

THE COURT: As to the Michigan Department of Civil Rights document entitled report –

MS. HEYSE: Your Honor, perhaps it would be more appropriate for me to make my objection before.

MR. MOGILL: It's just a title page.

THE COURT: You can make an objection, but I assume you'll object – go on and make your objection. But I think I know what your objection is, and I think I'm going to sustain it. But let me put it on the record.

MS. HEYSE: Okay. Thank you, your Honor.

Your Honor, we have two objections to the admission of this document. First, obviously on relevancy grounds. We don't believe that this document is relevant to the issues in this case. It doesn't deal with same-sex marriage, and in fact, deals with inclusion of sexual orientation for purposes of civil rights here in Michigan. It would not inform this Court on any of the State's justifications. So for that reason, we don't believe it's relevant to these proceedings.

[66] We also have some hearsay objections to this. It does have some hearsay within hearsay that we would, if it was to be admitted, we would ask to be stricken from the document.

THE COURT: Okay. Any further argument by Plaintiff?

MR. MOGILL: This is a report, what we have requested –

THE COURT: I had a chance last night also. I can't say I read it, because I did not. I read Dr. Chauncey, but did not read this report.

MR. MOGILL: Okay.

THE COURT: But I looked through it and skimmed it.

MR. MOGILL: All right. This is a report prepared by an arm of the State, the Michigan Department of Civil Rights. It addresses specifically issues of discrimination against gay, lesbian, bisexual and transsexual individuals in the state of Michigan. In particular, there is within that report, a finding by the State –

MS. HEYSE: Your Honor, I apologize. I would object to them putting up –

THE COURT: I sustain it.

MS. HEYSE: Thank you.

THE COURT: If it's not in evidence, you can't argue it. You're arguing its admissibility, not what it has to say.

MS. HEYSE: I would ask also that counsel to –

MR. MOGILL: I think I'd be to allude to what it says [67] in order for the Court to understand the relevance.

THE COURT: You don't have to allude to it. You can tell me generally what it says.

MR. MOGILL: Fine.

THE COURT: Though I looked at it.

MR. MOGILL: The report goes into detail.

MS. HEYSE: Your Honor, if I could ask that it be removed?

THE COURT: Yeah. That's fine. I skimmed it last night anyhow. I can't say that I didn't see it.

MR. MOGILL: The report goes into detail about the history of discrimination within Michigan against LGBT individuals. It goes into detail about the economic disadvantages suffered by LGBT individuals. It does so as a result of a very lengthy, detailed and comprehensive study, again, by an agency of the State.

The standard for relevance under Federal Rule of Evidence 401 is, of course, broad. And within the Sixth Circuit, issues of relevance are to be – the standard for relevance is extremely liberal as indicated by the Sixth Circuit in *V & M Star Steel vs. Centimark Corporation, 678 F3d 459 at 468,* a 2012 case.

And the standard, again, is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or [68] less probable than it would be without the evidence is relevant. And that's from *Robinson vs. Runyon,* at 149 F3d 507, page 512, a 1998 Sixth Circuit case.

And the third legal point I'd like to address, even if the evidence is insufficient to prove the ultimate point for which it is offered, it may not – a court may not exclude the evidence if it has the slightest probative value, DS – DXS – start over again. *DXS, Inc. vs.*

Siemens, S-I-E-M-E-N-S, *Medical Systems, Inc. 100 F3d 462 at 475.* That's a 1996, Sixth Circuit case.

The history of discrimination, the history and fact of disadvantages suffered by same-sex couples, by LGBT individuals in this state is relevant to the Court's evaluation of whether or not there is a rational basis for the Michigan Marriage Amendment and the parallel statutes.

This report, again, prepared by an agency of the State, which is the official body whose policy is at issue here.

I think that for the same reasons that Professor Chauncey's testimony is relevant for the Court's consideration, this report gives a good detailed local complement to that, and respectfully request that the Court receive it in evidence.

THE COURT: Okay. Counsel, it looks like you'd like a couple words.

MS. HEYSE: Sure.

[69] THE COURT: That's fine. You're entitled to the last word, since it's your motion – since it's your objection.

MS. HEYSE: Thank you, your Honor. I appreciate that.

Given the purpose under which Plaintiffs want to submit this document to prove history of discrimination, it would be cumulative, given the admission of Dr. Chauncey's report. So for that reason, in addition

to those I've already articulated, we would ask that the Court exclude this evidence.

THE COURT: Okay.

MS. HEYSE: Thank you, your Honor.

THE COURT: Thank you.

I will preserve the objection. And I agree with counsel, my skimming of it appears to be cumulative. But the mere fact that something is cumulative doesn't make it not admissible. And I think, again, I don't want to leave either side with the impression of how much weight I'm going to give it and so forth, but I think it is admissible. And the Court will accept it as whatever exhibit, I forgot.

MR. MOGILL: Thank you.

THE COURT: Any other housekeeping matters?

MS. STANYAR: Yes, Judge. I've been remiss. We have been assisted here in the courtroom, and I just want to identify the people.

THE COURT: Please. My curiosity was piqued.

MR. MOGILL: One other housekeeping detail.

[70] THE COURT: Absolutely.

MR. MOGILL: I apologize. I've lost track as to what's been admitted and not. Obviously, throughout the testimony of several witnesses, we

have had demonstrative exhibits. We are not offering them as evidence, but we are – I want to make sure they are admitted into the record as demonstrative exhibits.

THE COURT: I think we talked about that. They are not evidence, but I have been provided copies and so forth, not as evidence, just what was demonstratively indicated.

MR. MOGILL: Okay. I wasn't sure if we had formally taken care of that.

THE COURT: I think we talked about it.

MR. MOGILL: Okay.

THE COURT: I'm glad you cleared it up.

MR. MOGILL: I want to, again, thank you.

MS. STANYAR: So I'd like to acknowledge Stephanie Augustyniak, who has provided a tremendous amount of assistance here.

THE COURT: Tell me, are you a lawyer?

MS. AUGUSTYNIAK: No, I'm not. I've just been assisting the lawyers in this case.

THE COURT: Paralegal, student?

MS. STANYAR: Not a student.

THE COURT: Just help?

[71] MS. AUGUSTYNIAK: Interested party.

THE COURT: Super. Great. Glad to have you.

MS. STANYAR: From almost the inception, she's helped a lot.

THE COURT: Great.

MS. STANYAR: Wyatt – and then we have the U of M law students. Wyatt Fore, who has helped us a lot with the demonstrative exhibits.

THE COURT: Great. We've seen him.

MS. STANYAR: We have Abbye Klamann.

THE COURT: U of M also?

MS. STANYAR: Yes.

THE COURT: Okay.

MS. STANYAR: And Derek Turnbull. And we'll have more next week.

THE COURT: Okay. I know you've – they are not sitting here today. I know you had some folks sitting back at your table today. Were they assistant attorney generals and some students too, also?

MS. HEYSE: They weren't assistant attorney generals.

THE COURT: Good. Next time they are in, introduce them. I saw them there, I was going to do the same thing. I was going to somewhere down the line ask them. Today is Friday, so.

* * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs,

-v-

RICHARD SNYDER, ET. AL.,

Defendants. /

Case Number: 12-10285

VOLUME 5 – AM SESSION

BENCH TRIAL
BEFORE THE HONORABLE
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
MONDAY, MARCH 3rd, 2014

APPEARANCES:

For the Plaintiffs:	**Leslie Cooper, Esq.** **Carole M. Stanyar, Esq.** **Dana M. Nessel, Esq.** **Kenneth Mogill, Esq.** **Robert Sedler, Esq.** **Vicki L. Henry, Esq.**
For the Defendants: Richard Snyder, Bill Schuette,	**Tonya C. Jeter, Esq.** **Kristin M. Heyse, Esq.** **Joseph E. Potchen, Esq.**

Lisa Brown **Beth M. Rivers, Esq.**
Andrea J. Johnson, Esq.
Michael L. Pitt, Esq.

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* * *

[9] [Lisa Brown] A Written documentation, but they also would have to be in person at our counter.

[Mr. Pitt] Q Does the Oakland County Clerk do any verification of the information that the applicant submits on the affidavit?

A Well, we check, like I said, the driver's license. We get a lot of the information from the birth certificates because we need parents' names and parents' birth places. So we get a lot of that from that information.

Q On the reverse side of the application is there a printed copy of the Michigan laws that apply to marriage?

A On the back side of the affidavit there are the statutes listed – spelled out and written that say the different qualifications, who you can and cannot marry. You know, what degree of relations, you know, familial relations and things like that.

Q And what is the law in Michigan in terms of who you can marry in terms of relationships?

A Well, you can't marry your first cousin. You can't marry your sibling, your parent, things like that.

Q Okay. Are blood tests required under Michigan law currently?

A They are no longer required. We give information on HIV and things like that. We're required to give educational materials, but they're not required to have

* * *

[14] Q Other than this marriage license issue that's part of this case has the Governor or the AG ever told you how to do your job?

A No.

Q Okay. If you have legal questions about the performance of your duties how do you get them answered?

A Well, I'll do research. One of my deputies is an attorney as well so we usually just, you know, we'll pull up a statute and read it. You know, do our own research for the most part.

Q You try to answer your own questions?

A Yes, I mean again we have – you know, there's other county clerks that I can always reach out to if there's a question of procedure or, you know, how do you do this, that sort of a thing. That happens frequently where county clerks – it's like on the list

serve, you know, just kind of email everybody, how do you this, or how much do you charge for that.

So you can also inquire of your colleagues how they handle certain things?

A Yes.

Q Do you have any discretion in issuing marriage licenses?

A No, and we just have to follow the law.

Q Right. I'd like to pose some hypothetical situations [15] for you to help illustrate this testimony about no discretion.

A Okay.

Q All right. I want you to assume a couple appears before you and it's clear to you that because of their age or because of obvious physical conditions they are unable to procreate children, is this a legal reason for you to deny them a marriage license? And if your answer is no explain your answer.

Q Well, my answer is no. That's not something that is required by the state or – you know, they have to be old enough. There's not a maximum of what an age would be that you can't get married.

Q Is the ability to procreate children a legal requirement to get married in Michigan?

A No.

Q Can you deny a marriage license to a couple who say they do not intend to have children?

A No.

Q Is the willingness – let me put this question this way: Assume you fear that one prospectus spouse may cause physical harm to the other prospectus spouse's children if they were to marry, is that a legal reason for you to deny a marriage license?

A I don't have the authority to deny them that license, [16] no.

Q Is the ability or willingness to provide a safe and nurturing home environment for children a legal requirement in order to obtain a Michigan marriage license?

A No.

Q If the prospective spouses tell you they have no intention of ever living together as husband and wife is that a legal reason for you to deny them a marriage license?

A No.

* * *

BY MR. PITT:

Q You are aware of the ban on same-sex marriage in Michigan, Article I, Section 25?

A Yes.

Q And do you understand that the constitutional provision as it stands right now is the law in the State of Michigan?

A Yes.

* * *

[32] [Ms. Nessel] Q. So as you stated then there is a requirement that [33] these individuals who apply that the two applicants be of opposite gender; correct?

[Lisa Brown] A Yes.

Q Now, where on that form, if anywhere, is there a requirement for a criminal history check?

A There isn't one.

Q Where on that form, if anywhere, is there a requirement for a submission of medical records for the applicants?

A That's nothing that's required. So there isn't that.

* * *

BY MS. NESSEL:

Q So as you indicated then no requirement that these individuals have the ability to procreate.

A Correct, that's not the requirement.

Q Okay. And no requirement then that the applicants even intend to have children either biologically, or adoptive, by some other measure.

[34] A Correct.

Q Okay. And do you make any inquires of – any kind at all about the couple's parenting ability in making a determination as to whether or not to grant a marriage license?

A No.

Q What if one or both of the applicants has a conviction for child abuse, do you take that into account?

A We wouldn't know that and if we did, no, we wouldn't be able to do anything. As long at they're, you know, not related, if they're not siblings, etc. and over 18, and they live in Oakland County, etc.

Q What if you have – what if there's absolute proof that one or both of the applicants has actually sexually assaulted a child, they're a convicted pedophile would that play a factor in your determination as to whether or not they can marry?

A No.

Q Okay. What if one or both of the applicants of the couple prior to marrying already has children and those children have flunked out of school altogether, can you deny them a marriage license based on that?

A No.

Q All right. What if the children of that couple who's applying, what if they went on to become substance abusers [35] or convicted felons would that play a role in your decision as to whether or not you should grant them a marriage license?

A No.

Q Okay. So then if I understand this correctly even if this couple has actually raised children who have had terrible outcomes and yet these people are still capable of biologically procreating yet again do you still grant the marriage license?

A Yes.

Q Okay. What if one or both of the applicants has outstanding felony warrants for non-support violations because they have tens of thousands of dollars in arrearages for failure to pay child support –

MS. BRYA: I'm going to object, your Honor. This is cumulative. I think we've gone over.

THE COURT: Sustained.

MS. BRYA: Thank you.

BY MS. NESSEL:

Q Let me ask separately, do you make any inquiry at all about the stability of the couple?

A No.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET AL.,

Plaintiff,

Case No. 12-10285

-v-

RICHARD SNYDER, ET AL.,

Defendant. /

VOLUME 5 – PART B

BENCH TRIAL

BEFORE THE HONORABLE
BERNARD A. FRIEDMAN
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
March 3, 2014

APPEARANCES:

FOR THE PLAINTIFFS:

Carole M. Stanyar, Esq.
Dana M. Nessel, Esq.
Kenneth Mogill, Esq.
Robert Sedler, Esq.
Vickie L. Henry, Esq.
Leslie Cooper, Esq.

FOR THE DEFENDANTS:	**Kristin M. Heyse, Esq.**
Richard Snyder	**Joseph E. Potchen, Esq.**
Bill Schuette	**Michelle Brya, Esq.**
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Lisa Brown	**Andrea J. Johnson, Esq.**
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* * *

[35] [Mr. Mogill] And for those reasons, Mr. Girgis's proposed testimony does not meet the standard of 702, or the standard of 401.

THE COURT: Thank you.

Counsel, any argument?

* * *

MR. POTCHEN: Thank you.

Your Honor, we believe that Mr. Girgis's testimony is directly related to the issues that your Honor has to decide. We are talking about the State's rational basis for the marriage amendment.

He does cover a lot of the areas, most of all, why we would ever define, the State of Michigan ever defined marriage as between a man and a woman. He

can outline the State's justifications for doing so. And based on, for example, I'm looking here, this is your Honor's order I'm reading from, forestalling the unintended consequences that would result from the redefinition of marriage; three, tradition and morality; promoting the transition of naturally procreated relationships into stable unions. These are all articulated reasons and he directly addresses those points in his testimony.

THE COURT: Okay. Thank you.

In determining whether a witness should testify in a case, the Rules of Evidence require the Court to do two tests: [36] Number one, the qualifications of the person to testify; and number two, whether or not that testimony that is offered will help the Court determine the evidence or help me determine the facts in this particular matter.

The witness is very articulate. I think he's, he's very well educated and on his way to more education, and that he has done a lot of things. However, the Court does not believe that his qualifications to testify in the areas that he wishes to are such that it would meet the level or the standard that is required, not only in *Daubert,* but also in the companion cases.

He has participated in a debate in an issue that, of course, is very important to many. He has participated in group sessions. He has taken classes. He has been a guest lecturer in classes. He's done a lot of things. He's done some writing and he's got a lot of

forthcoming writings, things that he is working on and so forth.

But I think that based upon his experience and his, his writing and his discussions, it's more of an area that is in debating and talking about the issue and causing others to talk about the issue, and is not the kind of testimony that will lead this Court – does not have the background. And he's mentioned some professors, all of which I have not heard of. But had they come into court and testified what they were teaching him, would probably be very relevant and probably be [37] the kind of testimony that we're looking for.

But I think he's very eloquent and I think that some day he's going to be an expert witness, both in terms of his delivery, as well as his content. But right now, all he is offering to us is mainly his opinions. And he's indicated that he's read a great deal, and that he has opinions on certain things and opinions in terms of his philosophy and so forth.

But the Court does not believe that based upon what has been offered that he's going to testify to, or his qualifications, that both under the court rules and under the case law in this matter, that he should be allowed to testify. Therefore, the Court will not allow him to testify.

MR. POTCHEN: Thank you, your Honor.

THE COURT: That is no implication. I think some day you're going to be a great witness. I've

heard a couple very good professors testifying, probably, you know, and I've heard many, many years, and I think you're going to be one of those some day. And you will be in a position that, because of your teachings and because of your research and all the kind of things that it takes to be an expert, that you'll be in that position, but not quite yet. Okay.

MR. POTCHEN: Thank you.

(Witness excused, 10:57 a.m.)

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs,

v.

RICHARD SNYDER, ET. AL.,

Defendants. /

HONORABLE BERNARD A. FRIEDMAN

No. 12-10285

BENCH TRIAL

Monday, March 3, 2014

Appearances:

FOR THE PLAINTIFFS:

LESLIE COOPER, ESQ.
CAROLE M. STANYAR, ESQ.
DANA M. NESSEL, ESQ.
KENNETH MOGILL, ESQ.
ROBERT SEDLER, ESQ.
VICKIE HENRY, ESQ.

FOR THE DEFENDANTS:

TONYA C. JETER, ESQ.
KRISTIN M. HEYSE, ESQ.
JOSEPH E. POTCHEN, ESQ.
MICHELLE BRYA, ESQ.
BETH M. RIVERS, ESQ.
ANDREA J. JOHNSON, ESQ.
MICHAEL L. PITT, ESQ.

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* * *

[29] [Ms. Heyse] Q. Okay. Let's turn now to the American Psychological Association's position with regard to outcomes for children. Are you familiar with their No Differences Claim?

[Mark Regnerus, Ph.D.] A. In general, yes.

Q. Do you have an opinion on that No Difference Claim?

A. I think it's premature. In the social science of family which I have monitored off and on since I have been in graduate school I have not been actively into it until the last several years. But things historically did not change very quickly in the study of families and parents and things like that. But they seem to have changed rapidly in the last ten or fifteen years. And such that it seems premature to say that something that involves a reduced kinship, meaning somebody is not a biological parent to the child, to claim there are no differences. And it's important to clarify what the No Differences is against.

[30] But it suggests there is no differences between a parenting unit that, at least in one case, it lacks a genetic link to a child compared to parent units where there is a mother and a father and they are both the parents of that child and they stay in that relationship together. That had long been considered. I mean, in 1994 I think it was McLanahan and Sandefur in Wisconsin. And this was not a study of same sex parents, but it was about single parent families. And they said, if we were going to design the ideal family, I mean, we would pick this sort of two parent ideal where there is two genetic connections to the child, two sources of – resources for the child and security and things like that.

So just to watch the social science discourse change so rapidly on this subject struck me as unscientific, premature, and worth – I mean, scientists are nothing if not tending to be a little skeptical when people purport rapid change in a paradigm. So it just strikes me as premature.

* * *

[36] [Ms. Heyse] Q. So, Doctor Regnerus, are you saying there is no benefit to the type of studies that the APA relied on?

A. I am not saying there is no benefits. Different studies seek to do different things. Some studies kind of are social psychological aspects of parent/child relationships or parenting processes. So you can learn a lot from the dynamics of different families from convenient sample studies. What you cannot know is

how much they reflect an underlying population. So, if you had ten same sex couples in a convenient sample you can know a lot about those ten, but can you know how similar those ten are to same sex couples everywhere? I would said the answer is no, not from a non-probability study.

Q. So given that critique, in your opinion, what type of study is needed to definitively conclude there is no difference?

A. What kind of study is needed?

[37] Q. Yes.

A. A study as far as I am aware has not been done yet. The science in this domain as I said is new. People have been studying this for a while but just in the last year several years we have kind of started getting questions on it and to national representative studies. I have a longitudinal study, something that tracks kids from, I was going to say from birth, but really you want people from before, when parents meet or get together, and track them through the birth of children into ideally into their adulthood and interview every few years.

* * *

[103] Q. Thank you. So, again, turning now, you touched on this earlier and I want to circle back to it, in talking about the topic of this area being a new area of social science.

In your opinion, Doctor Regnerus, what has the social science of same sex parents based on convenient samples taught us to date?

A. I think it taught us about the dynamics going on within same sex households. It's also shown us it's possible to be stably raised in lesbian couple households. And if it's possible, it doesn't show it's probable. I mean, these convenience samples are not – you can get what is possible from them. I think Paul Amato (ph) [104] brings this up in his response in the July article, you know. He said if it would have been terribly destructive we should have seen it by now, these convenience studies. We see its possible. We don't get a sense of what the most likely outcome is. And you don't get that unless you use probability based studies.

* * *

[107] Q. Doctor Regnerus, do you believe that this issue is settled? So, in other words, there are no difference in outcomes between –

A. No.

Q. – children of same sex couples and children of opposite sex couples?

A. Nothing – it's not that nothing can ever be settled, but we are definitely sort of in the novel period of social science on relationships. I highly recommend more data collection efforts, prudence going forward with respect to large scale social changes. But we have not settled anything. I think is

what we have learned is that it's possible to grow up in a same sex household and the children be fine. You will only learn if it's probable until you really track kids over time with a lot of cases, far more cases than we have seen to this point.

* * *

[114] Q. In your opinion, Doctor Regnerus, can same sex couples raise children?

A. Sure.

Q. In your opinion, is there any conclusive evidence that shows that there are no differences in outcomes for children growing up in households with same sex relationships?

A. Say that again.

Q. Is there any conclusive evidence that there are no differences in outcomes for children growing up in a household with same sex relationships?

A. I don't think there is too many conclusive, too much conclusive evidence that there are no differences. I think there are some outcomes or some measures, relationship with the mother. But on average, I don't think we are anywhere near saying there is conclusive evidence that there is no difference. APA disagrees, [115] right? But APA, they wrote this years before we started really focusing on some of these population based broad nationally representative studies. And I think you should privilege those

kind of studies because they tell you what is going on among the people, not just one small group.

Q. In light of that fact, that you don't believe there is research and data to definitively answer that question about child outcomes, do you have any opinion as to the wisdom of making decisions on these questions without that critical information?

A. I think in any business, they don't make critical decisions based on lack of information. I think nor should governments. We have started adding to a new science. I mean, a new field, so to speak. Some interesting information. Didn't know what I would find. I think it's prudent to collect more data before one makes any major conclusions on this. That doesn't seem to be the movement of what is going on in the country. I mean, people are asking for change prior to ample information. I think it would be prudent and wise to be patient and map this out. Map it out in multiple data over time before you jump in.

* * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET AL.,

Plaintiffs,

-v-

RICHARD SNYDER, ET AL.,

Defendants.
_____/

Case Number: 12-10285

VOLUME 6 – AM SESSION

BENCH TRIAL
BEFORE THE HONORABLE
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
TUESDAY, MARCH 4TH, 2014

APPEARANCES:

For the Plaintiffs:	**Vickie L. Henry, Esq.** **Leslie Cooper, Esq.** **Carole M. Stanyar, Esq.** **Dana M. Nessel, Esq.** **Kenneth Mogill, Esq.** **Robert Sedler, Esq.** **Leslie Cooper, Esq.**
For the Defendants: **Richard Snyder,** **Bill Schuette,**	**Tonya C. Jeter, Esq.** **Kristin M. Heyse, Esq.** **Joseph E. Potchen, Esq.**

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Michael L. Pitt, Esq.

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* * *

[42] A That's what I wrote in the original study, yes.

[Ms. Cooper] Q Okay. Okay. Great.

Now, are you aware that yesterday the Chair of the Sociology Department at the University of Texas, your department, issued a statement posted on its website stating the following:

"Like all faculty" –

MS. HEYSE: Objection, your Honor. Hearsay.

MS. COOPER: I'm happy to provide a copy if you like. I'm not seeking to admit it again – happy to show a copy if you don't have it.

MS. HEYSE: I don't have a copy.

THE COURT: And, again, it's only for purposes of cross-examination.

MS. HEYSE: Thank you.

MS. COOPER: So I've marked this for identification as Exhibit 55.

BY MS. COOPER:

Q So, if you'll read along with me, the statement says,

> "Like all faculty Dr. Regnerus has the right to pursue his areas of research andexpress his point of view. However, Dr. Regnerus' opinions are his own. They do not reflect the views of the sociology department of the University of Texas at Austin. Nor do they reflect the views of the American Sociological Association which takes [43] the position that the conclusions he draws from his study of gay parenting are fundamentally flawed on conceptual and methodological grounds and that findings from Dr. Regnerus' work have been cited inappropriately in efforts to diminish the civil rights and legitimacy of LBGTQ, partners and their families. We encourage society as a whole to evaluate his claims."

There's additional material but I just wanted to call your attention to that paragraph.

Were you aware of this statement?

[Mark Regnerus, Ph.D.] A I saw it yesterday.

Q Okay. And what is your reaction to that?

A It's regrettable. I think the University has characterized my academic freedom. I guess they have been getting negative press probably about my appearance here, and decided to make a statement which they had not made before even though I had

conducted the research – the process a few years ago. The article came out a year and a half ago. I think they just wanted to distance themselves from me which is sad. And I heard from some of my colleagues that this was an inappropriate thing for the department to do.

Q And you are aware that The American Sociological Association did submit a brief, an amicus brief in the U.S. Supreme Court in the *Windsor* and *Perry* cases stating that

* * *

[53] relational stability tended to track towards, you know, greater legal stability.

Q But for heterosexuals you recognize that it's not just the matter of selecting the most stable, marriage also helps foster stability.

A On average, yes.

Q Okay. Now, you mentioned yesterday that in the NFSS the household rosters, those are the calendars that you talked about, right, they are complicated not just among the individuals in the "lesbian mother" and "gay father" group but also in other groups like the step family group and single parent family group; is that right?

A Yes.

Q So there was instability for those individuals as well?

A Yes.

Q So there was instability in all the groups in the study except for the one that was defined by the stability that would be the intact biological family group.

A Right.

Q Okay. Now, you talked yesterday about your decision not to control for family instability, that you didn't think it was appropriate to do that, but you did effectively control for stability among the exclusively heterosexual parent groups by creating the intact [54] biological family group; right? You separated out all the stable ones.

A I didn't control for it. It is reflected in the category.

Q Okay. Still talking about the topic of couples stability yesterday you cited some data from the UK where you said I think there were higher dissolution rates of civil partnerships of lesbians compared to gay men –

A Yesterday, I don't saying anything about the UK yesterday.

Q Oh, okay. I thought you did. My notes may be bad.

You also talked yesterday about Michael Rosenfeld's study on school progress using the US Census; right?

A Yes.

Q And you identified this study as relevant to couples' stability I think the language you used, you said the study controlled the way instability.

A Controlled for, yes.

Q But just to clarify what he controlled for was whether the child actually lived in the particular family structure at issue during the past five years; right?

A Right.

Q He didn't actually control for couple break-ups.

A Right.

* * *

[80] A Right, roughly a year before that or something.

Q Okay. I think you need to speak up just a bit.

A I'm sorry.

Q I saw people leaning.

A Some share of time before that, roughly a year.

Q Okay. I want to call your attention to the bottom paragraph. And, again, just before I read it, this is an email you wrote to Brad Wilcox, right, September 21st, 2010?

A Yes.

Q Okay. Bottom paragraph says,

> "I would like at some point to get more feedback from Luis and Maggie about the 'boundaries' around this project, not just costs but also their optimal time lines (for the coalition meeting, the data collection, et.) And their hopes for what emerges from this project including the early report we discussed in D.C. Feel free to forward this to them."

Did I read that right?

A Yes.

Q Now the Luis that refers to Luis Tellez of Witherspoon?

A Right.

Q And Maggie is Maggie Gallagher, the advocate against same-sex marriage?

[81] A I presume so.

Q Okay.

A I don't believe I ever – I don't believe I ever got feedback after that.

Q I'm just asking whether you wrote this.

A Yes.

Q Okay. And these are the same individuals, Luis Tellex and Maggie Gallagher who were among

others at the meeting in Washington, D.C. you mentioned where you talked about ideas for studies?

A Right.

Q Okay. So you wanted to know what hopes Luis Tellez and Maggie Gallagher had for your research project?

A I wanted to know what they – when they anticipated the results from this, and what it – what they thought it would like because we hadn't even met yet in January of 2011, to start hammering out how are we going to sample people, etc.

I was aware of, you know, what Witherspoon thought about same-sex marriage, but I was a skeptic at any data analysis project we took on could tackle what they might expect. So I wanted to know like if they had false expectations for what this is capable is doing. It was really intended to be a – it's an intellectual question we were answering. I think they would be surprised if – I [82] didn't know if they would expect that it could answer a lot more questions than I had a feeling it could.

Q At this point had Witherspoon already agreed to fund your study?

A I don't honestly know. I'm – I think the formal funding came later. I don't recall.

Q Will it help you refresh your recollection if you looked to what's numbered as point one, towards the top of the mail?

A I think they probably had given me a voice go ahead, but we hadn't gotten cost estimates yet or anything like that. I mention it at the bottom that, you know, costs. I didn't know how much it was going to cost and how much they thought they were capable of funding.

Q In point one, you're asking we want to run this project through UT's PRC. I'm presuming 10 percent overhead is acceptable to Witherspoon. You're asking about details of costs and funding; right?

A Right.

Q Okay. Now in the paragraph at the bottom we were looking at a moment ago, you reference the coalition meeting. What coalition meeting were you referring to?

A The only coalition meeting I can recall is – was in the fall of 2009, the one I mentioned at the hotel. But I don't know about – I'm not sure what coalition meeting [83] this referring to. I honestly don't.

Q You don't know what you meant when you wrote that?

A I don't. Unless it means – it's probably a reference to the pooling together of consultants and getting together which we did in January of 2011. That's my best guess.

Q Consultants –

A I don't know what coalition meant to me at the time here. We did meet, a body of consultants in January of 2011 to hammer out like how we're going to do this study.

Q And you might –

A It might have been that, I'm not sure.

Q You would have called the consultants on your study a coalition?

A A coalition of consultants, yeah, I don't know.

Q Okay.

A That would have made sense.

Q There's not a question pending.

A Okay.

Q I'm going to mark for identification Exhibit 61.

So what's been marked as Exhibit 61 is this an email you received from Luis Tellez of the Witherspoon Institute?

A On the bottom

Q I'm sorry, yes. Below the line there are two emails on this page. Thanks for clarifying. The bottom email.

[84] A Yes, I believe so.

Q And it's dated September – sorry. September 22nd, 2010?

A Right.

Q Okay. Now, in the body of it, are you talking about the NFSS Study they were funding?

A Yeah. I mean, it didn't have a name yet. I don't think it had a name. It was an idea at the time. The project that was going to get rolling starting in January of 2011.

Q Okay. Now – let's see. If you look he says,

> "Move on it. Don't dilly dally etc. It would be great to have this before a major decision of the Supreme Court"; is that right?

A Right, and before that he said don't get hung up with deadlines. Do it as right and best and think how you would want it done which is always what I did.

Q I think you mentioned yesterday that you approached Jim Wright at The Journal Social Science Research and asked him if he would consider reviewing your manuscript of the NFSS Study and if he be speedy about it?

A Right, in part because I had a report that I intended to write. I had my own internal deadlines around it. It just kept getting shifted in the future and I wanted to get back to my other research projects.

Q So you were so eager to have this published speedy

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiff,

Case No. 12-10285

-v-

RICHARD SNYDER, ET. AL.,

Defendant. /

VOLUME 7

BENCH TRIAL

BEFORE THE HONORABLE
BERNARD A. FRIEDMAN
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
March 5, 2014

APPEARANCES:

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* * *

[64] BY MR. POTCHEN:

Q. Dr. Marks, what are you going to be providing an expert opinion on today?

[Loren Dean Marks, Ph.D.] A. My expert opinion will focus on my article that I published in Social Science Research in 2012, that addresses the 2005 American Psychological Association's brief on lesbian and gay parenting.

* * *

[69] Q. Now, did you develop an approach for looking at the APA brief and the claims made therein?

A. Initially, I was just reading a few of the studies out of curiosity. But as I, as I got four, six, eight, ten studies deep, I started to notice some things that troubled me a little bit, made some notes of them, and began to be more systematic and take notes, write down numbers of sample size, et cetera, of certain characteristics of the studies that were cited. Those now appear as Table A in my 2012 article and also appear in full in my, my expert report.

The 59 studies I looked at, I identify a number of different issues, including the sample size for the way the lesbian and gay –

Q. Actually, we'll get into –

A. Okay.

Q. – the details of it. At this point, you developed some questions to address; is that correct?

A. I did.

Q. And what were those six – I'm sorry. What were those [70] questions?

A. I originally had about ten. And some of those elude me, but I trimmed it down to six questions that are featured in my expert report, seven in the article.

Essentially, in short, those questions were number one, how representative were the same-sex families who were sampled in the studies.

Number two, were comparison heterosexual group samples featured in each of these studies to, to provide a point of reference for any claims that were made.

Number three, if heterosexual comparison groups were used, what were the characteristics, the more specific characteristics of those heterosexual comparison groups?

The fourth was a reference to the page 5 APA statement that you've already referenced, which reads verbatim, not a single study, et cetera; namely,

were there in fact, contradictory studies that were marginalized or overlooked or minimized.

The fifth was in terms of the outcomes that were examined, what was, what was the nature? Were these child outcomes? Were these adolescent outcomes? Were these adult outcomes? And, and in the back of my mind, I was also considering something called soft versus hard variables that, that we can come back to later.

Q. Okay.

[71] A. The sixth question was were these outcomes that were featured long-term outcomes or brief cross-sectional outcomes from just one given point in time.

Those, I believe, cover roughly the six in my expert report. The seventh included a power, a statistical power issue as number seven, which essentially relates to the number sampled, how many people were sampled, what was the size.

* * *

[72] Q. Okay. And can you tell the Court what you did regarding the methods that you followed in preparing your review of these studies?

A. In preparing my, my review of the studies, I wanted to look at a number of different issues. One included the sample size of the gay and lesbian samples that were used. One included the size of heterosexual samples, if they were used. Other issues, as I mentioned, included the type of outcomes

that were being looked at, and whether the, the study had a sufficient size or statistical power to be making strong claims.

Another very important issue in terms of sampling is not just the size, but whether these samples were random, meaning non-biased, if they were representative of the broader population, or if, as is the tendency with many convenience samples, if they favored a certain portion of the broader population.

Q. And what else went to the preparations of your opinions that you'd like to present here today, or your paper?

A. The APA brief, pages 23 through 45, lists 59, or actually 67 studies that, that they claim relate directly, empirically, [73] to lesbian and gay parents and their children.

Eight of those studies were unpublished at that point in time. I eliminated those eight and read the remaining 59, and formulated claims by carefully examining those studies in connection with some of the issues that I just mentioned.

I've continued to read studies, an additional 40 plus since then. My related study count is, is over 100 at this point.

In addition, as I formulated what became my 2012 article, I sought informal feedback from, from colleagues around the country. I'm not a fan of solo authored work on the whole, because we expose ourself to blind spots that all of us have, which is

something that I've written about in my work. I thought it was important to get as much feedback as I could informally about things I had overlooked, about blind spots, about weak spots.

* * *

[75] Q. Before we get into the six questions, can you tell us a little bit, you've already explained some of it, but can you explain convenience samples?

A. Convenient sampling in the social science is – a convenient sample involves very much what it sounds like. You sample those who are convenient. You grab the low-hanging fruit. You, you get those who are most easily accessible.

Q. Are there any limitations with using convenience samples?

A. There are. The benefits, and I've used it myself, are that it's the easiest way to go, typically. The pronounced cost among many others is that it has exceptionally low levels of external validity, which is often referred to as generalizability, which means that while you can make claims that relate to the specific sample or group that you have, that you have investigated, the claims cannot be broadened beyond that specific group, even to the population that it represents, much less the larger population.

Q. Is there a potential for bias by volunteers?

A. There is a high, there is a high potential for bias by [76] volunteers in convenient sampling.

Q. In your opinion, is there a better method to make generalized observation for a larger population?

A. Well, to go back to what I said a minute ago, you cannot make a generalizable claim of any kind, based on, on convenient sample, not from an objective scientific perspective.

The hope is – I think in most domains of social science, we have to begin somewhere. And typically, you begin with convenient sampling. The hope is that, as a discipline matures, you move from convenient samples, eventually to a weighted probability sample, and eventually and ultimately to a large, random representative sample. That can take years, it can take decades, but that is the aim that we seek.

Table B in my article lists 15 such studies that relate to marriage-based intact families and outcomes of children from those families.

Q. In social science research, is it important to have clearly defined comparison groups before drawing conclusions regarding differences between two groups?

A. Very much so. For example, Mark Strasser, who is a same-sex marriage advocate, wrote in a 2008 –

* * *

[77] THE WITNESS: . . . Going back to, to Professor Strasser, on page 37, he points out, again, bearing in mind that he, himself, is a same-sex marriage advocate, that the LGBT population, vary

widely, in their accepted views, attitudes and practices, and [78] for this very reason, it would be misleading to cite a sample of urban gay men from southern California, as though they represented gay men nationally. Again, that's on page 37 of his work there.

That, that's a well-made point. It's part of the point that concerns me with many of the studies. They don't cite – of the 59, very few deal with gay men. Only eight of the 57, or 59 studies actually do directly with children's outcomes. But the, the point being that you need a nationally representative sample to make national claims.

I also mention in my article that it seems reasonable to, to ask that when we're informing state and national policy, that we do have at least some nationally representative samples that are informing our decisions.

BY MR. POTCHEN:

Q. What are considered soft variables and what are considered hard variables?

A. In terms of soft and hard variables, which was an issue of concern working through the, the outcomes featured in the 59 studies, a so-called soft variable is one that is subjective, that's often arrived at through self-report. It may be one that you and I would differ significantly on, if we were reporting on a third issue, third party issue. This would include things like psychosocial adjustment, gender identity, et cetera. Both of those are, are things that are

repeatedly [79] assessed and addressed in the studies featured in the APA brief. Twenty of the 59 studies, for example, deal with gender related issues.

A hard variable, or as I would prefer to call it, a third party verifiable outcome or variable would be one that, with almost 100 percent consensus, scientists could agree on. Examples would include a high school graduation, divorce, did a divorce take place or not. Mortality, that would be a pretty difficult one to disagree over, et cetera. You get the idea.

I'm not saying that all studies need to deal with hard third-party verifiable variables, most do not. But they have a unique strength in terms of their objectivity. And they serve as a check and balance, if you will, for work that takes place on soft variables.

* * *

[82] [Mr. Potchen] Q. Okay. Let's go through the six questions and your findings and how you addressed this. Okay?

The first question, what did you find regarding how representative and culturally, ethnically and economically diverse were the gay and lesbian households in the published literature behind the APA brief?

A. What I found was that repeatedly, and by the reports of same-sex parenting researchers themselves, that the group that had been repeatedly selected to represent, to represent all same-sex

parents was privileged, well educated, middle to upper class, and racially white lesbian mothers.

Q. Of the 59 published studies, how many of the studies are based on convenient samples of less than 100 participants?

A. Forty-five of the 59 studies are based on convenient samples of less than 100, about three quarters roughly.

Q. Did any study strike you as unusually small?

[83] A. There were several that struck me as unusually small. One in particular that comes to mind, is Wright 1998, that had a sample of just five lesbian mothers with no comparison group.

Q. And are you familiar with Professor Mark Strasser?

A. I know his work as mentioned earlier, but I do not know him.

Q. Okay. And can you explain or identify what are his – how his work might come into the size or sampling and how that may affect your opinions?

A. As I mentioned earlier, he said that it is inappropriate to assume that a small sample from one part of the country, or featuring a demographic tendency, be generalized to represent the nation. Again, that's my concern here, that were dealing with homogenous sampling.

Q. Any other aspects regarding the first question that you would like to testify about?

A. As I looked closely at the, at the samples of the studies, I explicitly note a number of studies under, under the heading of question 1, that explicitly stated that they used 100 percent white samples. There were about another dozen or so that are –

Q. White samples, you're referring to race, is it?

A. Racially white samples.

Q. Okay.

A. I mentioned that many others do not make a statement that [84] that's the case, but *de facto* do not mention a single minority participant, racially minority participant in their studies. And there are another 12 that acknowledge almost all white samples.

Q. And what you found regarding question 1, did that cause you any concerns as a scientist?

A. It did, on a number of levels. Because we're dealing, again, with a privileged, relatively privileged sub-sample of the sample of same-sex parents, again, well educated, wealthy, racially privileged.

I was also struck by the very small number of studies involving gay fathers directly in terms of their children's outcomes. On the whole, as I moved away from question 1, it appeared to me that privileged lesbian mothers had repeatedly been used to represent all same-sex parents across socioeconomic

strata, across race, and even across sex, meaning gay fathers as compared to lesbian mothers.

Q. Okay.

MR. POTCHEN: For the Court's convenience, we have attached the Table 1 that he'll be referring to. He'll identify a lot of names that, the spellings of the names and what the studies are, are attached to the PowerPoint as well. So you'll see them attached.

THE COURT: Thank you, very much. And we have a copy for our court reporters?

[85] MR. POTCHEN: Yes. I'm assuming that she would ask for one, so we'll get one for her.

THE COURT: That's excellent. Makes it much easier. Thank you, very much.

BY MR. POTCHEN:

Q. The second question, what did you find regarding how many studies of gay and lesbian parents had no heterosexual comparison group?

A. As I, as I took a closer look in terms of comparison groups, making the note that if your comparison – comparing any two groups and making claims, it's important to have representatives of, of both groups included in your study.

I went through, and of the empirical studies cited by the APA as directly relating to gay and lesbian parents and their children, there were 59, and 33 of

the studies did include a heterosexual comparison group; twenty-six did not. 44.1 percent, almost half of the conducted studies, again, included no comparison group of what, whatever size.

Q. And as a scientist, aid this cause you concerns?

A. In my article, I, I stated that although having that smaller number of studies does not negate the APA's claim, it does clearly dilute it considerably, since we're left with, with only about a little more than half of the original sample of studies.

Q. Okay. Third, what heterosexual comparison groups were used [86] and what were the characteristics of those groups?

A. This was, this was one of the first issues that, that struck me as, as I read through the studies.

Directly in my, in my article, I mentioned that 11 of the 33 comparison studies explicitly mention that they used single mothers, typically single divorced mothers as the heterosexual comparison. There were an additional two studies by Bigner & Jacobsen in 1990 or 1989, A and B, that used 90.9 percent comparison group of gay fathers.

With that said, that leaves us with at least 13 of the 33 studies that used exclusively, or almost exclusively single parent, single-parent heterosexual parents as the group representing all, all heterosexual parents.

If we look at the, the remaining 20 studies, beginning with 33 comparison studies, removing those 13 that I just mentioned, we're left with 20.

It's difficult reading through those 20 studies that remain, in many cases, who or what the characteristics of their comparison group were. Many times, you come across generic phrases such as parents, or mothers or couples. For example, with couples, we are often not told if these were cohabiting couples, if these were remarried couples or intact marriage-based families.

This is, this is significant, given the fact that there's a, a large body of, of studies based on large [87] representative samples, 15 of which are listed in Table B that mention or that find significant differences in a number of different outcome areas between children from intact marriage-based families and other family forms, including divorced, stepfamily, and single-parent families.

Q. The fourth question that you looked at was does a scientifically viable study exist to contradict the conclusion that not a single study has found children of lesbian and gay parents to be disadvantaged.

And what did you find regarding that particular question?

A. There are several. Many of those –

Q. Several that what?

A. There are several that would contradict this claim by the APA. Many of those, and in my opinion, many of the best of those, post date 2005. And I don't plan to, to address those today.

But in terms of those that predate 2005, it would have been fair game for the APA to cite and reference. Two were of specific interest to me: Sarantakos 1996 and Sarantakos 2000.

* * *

[93] Q. Okay. Now, the fifth question that you had was what type of outcomes had been investigated.

A. We have them up on the screen. Well, actually –

[94] Q. For the record, we have to identify what they are.

A. Okay. Actually, could you restate the question one more time?

Q. Yes. What did you find regarding outcomes? I'll do it real broad.

A. In terms of outcomes, I noted earlier that the most often studied outcome seemed to relate to gender. Twenty out of the 55 or 59 studies related to gender, and that, almost conspicuously absent by comparison were the following critical societal concerns. We see here, I list these in the article and my expert report: Health, mortality and suicide risks; drug and alcohol abuse; collegiate education and/or

labor force contribution; serious criminality and incarceration; collegiate education and/or labor force contribution. It looks like we've doubled up there. And early sexual activity and early childbearing, and also subsequent divorce as adults.

These are, number one, very important from a societal standpoint, as I already indicated. But if we look closely and think like scholars for a minute, we will also note that these, these outcomes are not child outcomes. That these particular outcomes are not going to be optimally observable in most cases until late adolescence or even early in mid-adulthood in many cases, which is a point of significant concern when we consider that the vast majority of the children involved in the 59 studies were, were rather young.

[95] Q. So regarding the APA brief's statements and your findings regarding question 5, did that raise any concerns to you?

A. It did. Primarily because in these, in these seven or eight areas of societal level concern, we know, we know very, very little or next to nothing, either way, about how same-sex parenting may influence or not influence these, these very important considerations.

Q. And the sixth question that you sought to answer was what do we know about long-term outcomes of children of lesbian and gay parents. What did you find regarding that?

A. In some ways, this concern piggybacks off of the point that I just made. If we, if we're assessing things, if we're assessing things, for example, like education, the best we can do if we're, if we're looking at grade school children is grade school outcomes. If we're looking at middle school children, well, that's, that's what we're limited by. But in many cases, the most important outcomes of interest will come, will come later.

What, what I found was that very, very few comparison studies examine the critical societal outcomes during late adolescence or early, early adulthood, and those, those that do, tend to use very small convenient samples. None of those are large and representative.

An exception to that regarding those critical societal outcomes that were featured on the previous slide is the [96] Sarantakos 2000 study. But again, it was not featured at all in the APA brief.

Something I failed to mention is that total sample of 181 children from same-sex parents would have made it, by far, the largest children's outcome study in the APA brief, had it been cited in the APA brief.

Q. In your studies of the samples, did you find to be an average sample size that was used?

A. That's an interesting question. The total of, of all sample sizes, and there's a little bit of wiggle room here, but as I totalled up the samples for each of the 59 studies, the total was 7,800. This, however,

includes psychologists' opinions, college students' perceptions, et cetera.

If we, if we narrow our parameters to what is of interest and concern to us here today, and that is children's outcomes, and I'm zeroed in on, we find a much, much smaller sample size.

For example, we lose from the list of 59 studies, a study by Morris, et al., 2002, which had a very large sample size, 2,431, but it was based solely on adults' reports of coming out gay or lesbian, not on children's outcomes, even in an indirect sense.

Eliminating studies like that, when zeroing in on children's outcomes, I found based on my work in Table A, that there are a total of only about 900, slightly over 900 children [97] represented.

If we take a closer look still, we find that many of the researchers or, or research advocates in some cases, use the same small, non-representative convenient samples, seem to use them repeatedly. If we trim those duplicate studies off, as well as the Sarantakos 1996 study that I, that I mentioned a minute ago, which was criticized heavily by the APA, then we end up with a total of 685 children, only about 8.8 percent of the total initial sample size of 7,800.

Bearing in mind that of those 685, those are not a random representative sample, but those are based on small, non-representative convenient samples.

By comparison, if you look at Table B, the very smallest study that I cite there, based on

representative data is, I believe, Ellis et al., with a sample of over 700, meaning that all of those comparison studies involving children's outcomes, and there are 19 of them that we're left with of the 59, total less than the smallest nationally representative sample or probability sample in Table B.

If we run the numbers on those 19, to conclude in answer to your initial question, the average sample size of the children of lesbian and gay parents is 36 in those particular studies, which, again, concerns me because that's only six larger than what is typically considered the absolute minimum that you would want to use in a scientifically viable study, an [98] "N" of 30.

Q. So to be clear, the APA is making a, in your opinion, a bold statement about not a single study has found children of lesbian or gay parents to be disadvantaged in any significant respect relative to children of heterosexual parents. When you boil everything down, they are talking about perhaps 19 studies with an average sample size of 36?

A. Yes. And again, that eliminates the Sarantakos and duplicate studies.

Q. Which found, actually, there to be problems?

A. Right.

Q. Okay.

A. But even with the most generous estimate of 900, 910 earlier, we're still looking at a fraction of the

7,800, less than a thousand children when we boil it down. Again, emphasizing if that is not a representative sample, it's a conglomeration of small, and in many cases, privileged samples.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs,

v.

RICHARD SNYDER, ET. AL.,

Defendants. /

HONORABLE BERNARD A. FRIEDMAN

No. 12-10285

BENCH TRIAL

Wednesday, March 5, 2014

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* * *

[23] [Mr. Potchen] Q. Have any reports or studies been brought to your attention that are definitive to the issue of children being raised by same sex couples?

[Loren Marks, Ph.D.] A. In short, if we are talking about, and I am, about large representative samples that can be considered to be generalizable, the answer is, no. Potential exceptions would include Rosenfeld 2010 and Price, Allen and Pakaluk 2012. Extremely large census based studies. But both those studies only look at one small dimension of one of the seven or eight critically, societally important outcomes that I mentioned. That outcome is education based. It's progress through school which is a binary. Yes or no, you pass it. It's not even nuanced by grade point average, etc. So it's a crude measurement and I believe both Rosenfeld and also Allen and colleagues acknowledge that. But I think it's probably the best study that we have to date.

Q. Okay. All right. Doctor Marks, what is your opinion regarding the data claiming that there is no difference between children being raised in same sex households and those heterosexual two parent households?

A. None of the 59 studies cited in the brief compare a large representative sample of same sex parents with a large representative sample of marriage based intact [24] families. Not one. Further, if we look more closely, as I mentioned earlier, those outcomes that should concern us most from a societal and economic perspective have been almost entirely overlooked in favor of gender and other arguably less important outcomes.

So what we are left with largely are small convenience samples that are biased, rather heavily even by the researchers' own admissions that look at outcomes often in childhood as opposed to adolescence or adulthood when we would expect to see the most valid expressions of those outcomes. After reading very carefully through the 59 studies, my conclusion was that I cannot personally as a scientist in good conscience make a strong data based claim for or against this issue. I don't believe that that claim would be based in high quality science.

* * *

[27] BY MS. STANYAR:

Q. All right. You are listed as a co-author on this report, is that right?

[Loren Marks, Ph.D.] A. Yes.

Q. And this is a report from the Institute for American values. Is that right?

A. Yes.

Q. All right. And you appear as one of the co-authors on page, I guess, it would be page five?

A. Yes.

Q. Prior to agreeing that your name could be included in this report as a co-author, did you review the entire report?

A. Yes.

Q. Did you make recommendations and additions to the text?

A. Some minor recommendation and minor additions, yes.

Q. I would like us to turn to page 12 of that report. And these are 30 conclusions, a snapshot, and they fall under the categories of family, economics, physical health and longevity, mental health and emotional well-being and crime and domestic violence. If we look at number two, children are most likely to enjoy family stability when they are born into a married family. Did you sign off on [28] that conclusion?

A. Yes.

Q. Number four, cohabitation is not the functional equivalent of marriage. You signed off on that statement?

A. Yes.

Q. Number seven, marriage and a normative commitment to marriage fosters high quality relationship between adults as well as between parents and children. You signed off on that statement?

A. Yes.

Q. Number eight, marriage has important biosocial consequences for adults and children?

A. Yes.

Q. Number nine, divorce and an unmarried child bearing increases poverty for both children and mothers and cohabitation is less likely to alleviate poverty than is marriage?

A. Yes.

Q. Number ten, married couples seem to build more wealth on average than singles or cohabitating couples?

A. Yes.

Q. Eleven, marriages reduces poverty and material hardship for disadvantaged women and their children.

A. Yes.

Q. Number 14, parental divorce or failure to marry [29] appears to increase children's risk of school failure?

A. Yes.

Q. Number 15, parental divorce reduces the likelihood that children will graduate from college and achieve high status jobs?

A. Yes.

Q. Number 16, children who live with their two married parents enjoy better physical health on average than do children in other family forums?

A. Yes.

Q. Number 18, marriage is associated with reduced rates of alcohol and substance abuse for both adults and teens?

A. Yes.

Q. Number 21, marriage seems to be associated with better health among minorities and the poor?

A. Yes.

Q. Number 22, children whose parents divorce have higher rates of psychological distress and mental illness?

A. Yes.

Q. Number 27, marriage appears to reduce the risk that adults will either be the perpetrators or victims of crime?

A. Yes.

Q. Let me double back. Children whose parents, number 22 – did we already cover that one? Yes, we did. Number [30] 24, family breakdown appears to increase significantly the risk of suicide?

A. Yes.

Q. Number 26, boys raised in non-intact families are more likely to engage in delinquent and criminal behavior?

A. Yes.

Q. All right. In terms of your background in preparation for your testimony today, did you read the reports of the state defendant experts Doctor Allen, Doctor Price, Doctor Regnerus or Mr. Girgis?

A. No.

* * *

[67] Q. And we are having this discussion and we have been having this discussion for two weeks now, and it is a serious discussion. And I think everybody in this room takes it very seriously. So point taken.

Has the Government ever funded a study which would meet your gold standard, longitudinal probability, all those criterion, studying child outcomes for same sex parents?

A. No, not that I am aware of.

Q. Do you know of any large Government funded study in progress meeting your gold standard that would be studying those issues?

A. No.

Q. Do you know of any study in progress funded by a large university studying this issue under your gold standard?

A. No.

* * *

[121] [Mr. Potchen] Q. Okay. You have – you were asked some questions about gender differentiated parenting during Cross-Examination. Do you recall?

[Loren Marks, Ph.D.] A. Yes.

Q. And do you believe it's important to be cautious before eliminating gender diversified parenting?

A. Yes.

Q. Do you think that science is settled that it's a good idea to completely eliminate both a mom and dad from raising a child?

A. No. I don't think it's settled.

[122] Q. Why not?

A. Because based on the points that we went through in Why Marriage Matters, what we do know is that intact marriage has significant correlation to

positive children's outcomes. We do know that. What we do not know is why. Is it gender differentiated outcomes? We don't know based on those large representative samples.

* * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET AL.,

Plaintiffs,

-v-

RICHARD SNYDER, ET AL.,

Defendants. /

Case Number: 12-10285

VOLUME 8

BENCH TRIAL
BEFORE THE HONORABLE
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
THURSDAY, MARCH 6TH 2014

APPEARANCES:

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* * *

[3] Detroit, Michigan

Thursday, March 6, 2014

(At or about 9:00 A.M.)

– – – – – – – – –

THE COURT: Good morning, everyone.

MS. HEYSE: Good morning, your Honor.

THE COURT: Just a couple of things I thought we would talk about.

Number one, is tomorrow in terms of Closing Arguments how about starting at 10:00; is that good? I thought that would give everybody a little more leeway to get downtown.

The other thing is that the expert reports, I don't think – I don't think, have not been offered as evidence. Is it the parties' intention to not offer or to offer them?

Obviously, we have copies of some of them that we've read because they were attached to some motions. But I don't care, I'm just – you know, they've been referred and so forth.

MS. STANYAR: We're not going to offer the expert reports. We just wanted them to testify.

THE COURT: You're not going to?

MS. HEYSE: From the States defendants' prospective we would like to get them in.

[4] THE COURT: Okay. If the State wants to offer them, as I say, they've all been authenticated, they've all been testified to, why don't we – you can mark them and if –

MS. STANYAR: Well, if they're going to put theirs in, we'll put ours in.

THE COURT: It's up to you. I'm not forcing anybody to do anything, but they've been referred to so often and they've been identified so the only thing they haven't been is offered, but certainly – you can think about it. If you want to offer them –

MS. STANYAR: If you're going to allow theirs in, we want ours in.

THE COURT: Oh, I think they're both allowable in, but – it's up to you if you want to make a motion to have them in.

MS. STANYAR: Okay. We'll do that.

THE COURT: Okay. Mark them and –

MS. HEYSE: We'll bring them tomorrow morning.

THE COURT: As I say, it's not a requirement, but I thought about it last night, we've referred to them, talked about them, and I've read several of them because they were attached to the motions.

* * *

[23] Q Doctor Allen, do you believe it's important to [24] minimize or eliminate bias in social science research?

A I think it's absolutely critical. If all you're interested in doing is studying a small group on their own then it doesn't really matter. But if you're interested in generalizing your findings to talk about a broader implication of your findings then it's absolutely critical to have an unbiased sample because otherwise you're going to end up making a mistake in your generalizations.

Q Is it also important to have random representative samples?

A That's the way we eliminate bias is to have random samples, one of the ways.

Q And is it preferable to have tests that can be replicated by others?

A I think that's also sort of critical for the general authority of a paper. If you do something that nobody else can replicate I think the paper has less merit.

Q And do you believe it's imperative for subjects to have an incentive to report honestly and to not have an interest in the outcome?

A Absolutely because if somebody's telling you something that's not true then your study is biased from the get go. You may be completely unaware of the bias and making generalizations based on claims that are false.

Q Is it also important in social science that the people [25] who collect the data be different from those that analyze it?

A I just think it's a good idea that – in typical studies in economics we're using data that's collected by statistical agency. They're the – you know, it's the U.S. Census, Canada Census or Stats Canada or Department of Labor or whatever. So the people that are collecting the data have no idea what that data is going to be used for. So it's sort of a safeguard.

You know, in preliminary studies, it's very common for people to collect data and analyze it. But it's just, again, something that's a red flag if you're trying to generalize things.

Q You mentioned that it's important or preferable to have large sample sizes. Why is that important?

A Large sample sizes help to generate power. Power is the ability to reject a no-hypothesis when, indeed, it's false. If you don't have power, you're

unable to do that. There's too much noise in the data, and you can't tell if it's false when it actually it is.

Q Okay. So we're going to define some of these terms that you just used.

A All right.

Q Can you explain to the Court what a "no hypothesis" is?

[26] A "No hypothesis" is the hypothesis that you're interested in testing. So in this literature the "no-hypothesis" often is there is no difference.

* * *

[27] Q Thank you.

So, Dr. Allen, did you reach any conclusions about the child outcome literature that you reviewed from 1995 to 2013?

A I did. So prior to 2010, and a few of the studies after 2010, they're just simply not generalizable. They are to be charitable. They're preliminary studies, what I would call preliminary. So they have all these characteristics that up on the screen there that they use small samples. They use bias samples.

They're biased because often they're what's called convenient sample. And a convenient sample is a sample that's literally convenient to derive.

Many times samples are what are called snowballed which means members in the sample talk to their friends to join the sample.

There's evidence of research bias where people who are reporting are either coached or the results are interpreted by a certain world view, something like that.

They're characterized by what I call soft measures, measures that are difficult for a third party to replicate, and probably contain lots of measurement error because they're hard to measure.

And then it's also a literature that I think is [28] virtually impossible often to replicate. The data is not available for others. It's considered proprietary. The code that is being used is not publicly available. It's not posted on line or anything like that. So it's almost impossible to replicate.

So all those things are fine for preliminary studies, but they're not generalizable to the general population.

Q Okay. What does it mean by difference of means test with no power?

A So how these studies are structured is they'll have a sample of usually lesbian households. Then they'll try to match them with some other sample of heterosexual households. Most of the time they try that. Sometimes they don't. But so they'll have one sample of lesbian households, a sample of heterosexual households, and then they'll calculate some averages, some means. Then they'll conduct a difference of means test. It's just a simple little statistical test to see if there's a statistical difference in these

means, and they almost always find there is no statistical difference.

Now, there's two things about that. The reason why they're usually not finding a difference is just simply because they have no power. Their samples are so small, there's so much noise that they can't tell the difference.

[29] One study had a three, the other one had a zero. There is a difference, but the confidence bands are so wide that they can't statistically distinguish them.

The interesting thing about this literature is that a difference of means test is founded on the assumption that the samples are random. Samples are never random and so the tests are completely irrelevant and inappropriate.

Q Okay. You mentioned false measures. Can you explain what those are?

A So as I mentioned, I mean, these are things that conceptually are difficult to measure so you're asking about somebody's attitude towards something, how they feel about something as oppose to what I would call a hard measure which is more quantifiable, did you graduate from high school, yes or no. Have you been arrested, yes or no.

Q In conducting your literature review, Dr. Allen, how many of the 60 studies that you reviewed failed to have random representative samples?

A About 54 or 55.

Q How many of them failed to have tests that could be replicated by others?

A With the exception of the Rosenfeld Study I would say all of them.

Q Okay. How many of those 60 studies had the same people [30] collecting data as the people analyzing the data?

A Again, with the exception of the large sample studies virtually all of them.

Q Okay. And how many of those studies did not have sample sizes large enough to generate power?

A Again, aside from the large sample studies which is in the neighborhood of four or five them, all the others.

* * *

[31] Q Thank you. Out of the 60 studies that you reviewed how many met the criteria for reliable data meaning the data set is large, it's variable, it's replicable, it's longitudinal and it's population base?

A Well, by all of those criteria, actually none of them do. So the – that's because none of them are longitudinal.

If you get rid of the longitudinal criteria then [32] you're looking at really about I think three studies.

Q So based on your literature review, are the typical gay and lesbian parenting studies that examine hard quantifiable measures of performance and adjustment in the minority?

A Absolutely.

Q Doctor Allen, up until 2010, was there a single study conducted that utilized a sufficiently large random sample?

A No.

* * *

[38] Q Okay. Doctor Allen, plaintiffs' experts have urged that based on these sample – small convenient sample studies there's a consensus that there's no difference in child outcomes for children raised in same-sex households as compared to children raised in opposite sex households. In others that the children of same-sex parent fare just as well as intact biological household, and that that issue is settled. As an applied economist who has an expertise in empirical research methods and based on your literature review spanning from 1995 to 2013, do you agree with that?

A I certainly agree there's a consensus. Everybody agrees that these studies come to the same conclusion. The question is: is that consensus warranted or not, and I would say no. The fact that you have, you know, 55 preliminary studies doesn't give you – that doesn't add up to a, you know, a legitimate study that we would draw a strong conclusion from.

And even on the large sample random studies, the few that have been done I would say we're just getting in the door. We have a long way to go to understand what's going on here.

So, consensus, yes. Do I agree with the [39] consensus, no. And do I think the consensus is warranted, no.

* * *

[68] Q And do you know when it was first recognized here in the United States?

A 2004, in Massachusetts.

Q So ten years ago.

A Ten years ago. Late in 2004.

Q As someone who's been studying the family and marriage for more than 20 years is that enough time to formulate any definite conclusions about the effects of same-sex marriage?

A Highly unlikely. I know that sounds strange. You say ten years why isn't that enough?

Let's take the case of Massachusetts. It's really – the way to think about that it's one observation. So you have one-time series. You have some observations before, and you have a few observations afterwards. But that's just one-time series.

Imagine that's all you had. So you're going to look at anything like did it affect marriage rates, did it affect divorce rates. You've got one observation. You

really can't tell anything from one observation. There were millions of things that changed in Massachusetts in 2004. You can't control for all of them. Maybe the Boston Bruins didn't make the playoffs. Maybe that's really what's [69] driving divorce rates in 2005.

So you have to try to control for all these different things. So what we have to do is – what we would like to have is we want to have observations across different states. So we would like to have as many different jurisdictions as possible because then we can start control for differences across the states. And we would like to have as many observations across time so we can control for differences across time. And then we'd also like to have many – we'd like to have our observations at an individual level. Now that doesn't sound like a big deal that means there has to be some agency that's collecting data on an individual level across time, across states. So think again in the U.S. how difficult that's going to be because you don't have any federal agencies that are collecting data on sexual orientation, you know, prior to 2004.

Now, you say, well, maybe we could look across country. That's going to give you some more variation. But now you've got different countries that you have to worry about in controlling for. So that means you need even more information. You need more variation. So we talked about power coming from large sample sizes, but power also comes from having variance in these variables that you're using to

describe. So you need lots of observations, across lots [70] of time.

Now, let's talk about what you're actually trying to analyze. You're trying to analyze family outcomes. Families are very complicated things with all kinds of complicated dynamics, and lots of families vary on all kinds of dimensions. So, again, if you're just going to use aggregate statistics like let me look at the divorce rate in the state of Georgia and how it changed over time when the law changed. You know, you're just looking at average families. I mean, you're lumping a whole bunch of things together.

So even though it sounds like an exaggeration when you say ten years isn't enough time, it really isn't. The best analogy I can give there is the – basically the social experiment we've had with no-fault divorce.

So in the United States, you had California switch in 1969. You had a whole bunch of states switching throughout the 1970s. And it ends with South Dakota in 1985. So you had, you know, 16 years of transitions. You have people collecting data throughout that time.

The first real study of that analysis was in 1986. But like the Rosenfeld paper, it turned out that that result hinged on a very small coding issue. So that result was overturned in 1992.

In the 1990s we had all kinds of studies starting [71] to come along trying to estimate the effect of no-fault divorce.

MR. MOGILL: If it please the Court, this is not in his report.

THE COURT: Doctor, is this contained, this discussion contained in your report? I mean the no-fault and the –

THE WITNESS: I believe in the report I make a reference to the no-fault issue and the similarity there are to this issue.

THE COURT: Then I'll sustain the objection.

MR. MOGILL: Thank you.

THE WITNESS: I'm only making the argument that it took a long time. I mean, it really wasn't until about 2006 with Justin Wolfers' American Economic Review Paper, that people figured, okay, I think we're close to answering that question –

THE COURT: That's on no-fault.

THE WITNESS: Sorry?

THE COURT: That's on no-fault.

THE WITNESS: Yes. So it took 15, 30 years.

THE COURT: Okay. I think we've heard enough. That's good. I don't think we should go any further on that.

MS. HEYSE: Thank you, your Honor.

[72] THE COURT: Okay. Thank you.

BY MS. HEYSE:

Q So, Dr. Allen, based on your review of the – extensive review of the literature in this area from 1995, to 2013, as well as your own research on child outcomes, have you formed any opinions relative to this case?

A My opinion on this case is that of the evidence you've got there's no evidence, no hard evidence that child outcomes, that's no difference in child outcomes across household types. That what evidence we do have looks like there is a difference. My conclusion is that the State should be very cautious in making such a fundamental change to such a fundamental institution when there really isn't any evidence on the child outcomes issue.

Like my point two says there I think we're a long way from really understanding what the empirical results are in a conclusive way.

MS. HEYSE: If I may have a moment, your Honor?

THE COURT: Of course.

MS. HEYSE: Thank you.

(Short pause.)

I have nothing further, your Honor.

* * *

[127] [Mr. Mogill] Q I want to back up for a second. There's no ifs ands and buts in your paper or in Footnote 9 with respect to the statement that this paper does not study the effect of growing up in a same-sex household; correct?

[Douglas W. Allen, Ph.D.] A That's what it says.

Q Those are your own words; right?

A Those are my own words.

Q So then you've got your Table 5 and Table 6 based on one-year residency; right?

A Correct.

Q And those show approximately a 35 percent difference –

A Yes.

Q But you also took a look at the numbers where there had been five years of residential continuity; right?

A Right.

Q And it's correct, is it not, Professor Allen, that you find no statistically significant difference in high school graduation rates between the children of opposite sex married families and children of gay or lesbian parents when controlling for parental education and marital status based on five years of residency.

A Where are you reading that?

Q That's my question.

A No, are you quoting that from somewhere?

[128] Q I'm asking you a question.

MS. HEYSE: Your Honor, I would ask if he's quoting from something that it be identified so that –

MR. MOGILL: If I'm quoting from some place, I'm putting quotes around it and identifying it to the witness.

THE COURT: Very well.

A So when I originally submitted this paper to the journal I submitted both the one year and the five year. And the editor –

BY MR. MOGILL:

Q I'm sorry, I'm going to interrupt you because –

THE COURT: Just answer the question.

A No, I did not find that. The results were virtually identical, I believe.

BY MR. MOGILL:

Q All right. Look at Table 8 which you identify as the Appendix, and look at column 3.

A Table 8. Okay.

Q Column 3 is where you control for parental education and marital status. Asterisks mean statistically significant difference; correct?

A Okay, correct, yeah. There is it.

Q There is not statistically significant difference in high school graduation rates of children age 17, 22 living in an opposite sex or a same-sex household according to [129] your own data when there's been five years of residential stability; isn't that right?

A That's correct, yes.

Q You don't discuss that in your report; do you?

A Well, because I think for me Table 7 as I said earlier was the interesting table, the chief outcome of the paper.

Q There's no question though that your own report finds no statistically significant difference in graduation rates when you control for parental education and marital status and when you do control for five years of residential stability; correct?

A When you don't divide the boys and girls up, yes.

* * *

[133] A Are you asking me a question?

Q That's the question.

A What's the question, am I biased?

Q Yes.

A I don't believe I'm biased.

Q Okay. It is correct, is it not, and you testified to your religious affiliation on Direct Examination; right?

A Correct.

Q It is correct, is it not, that as part of your religious belief –

MS. HEYSE: Objection, your Honor.

THE COURT: Sustained.

MS. HEYSE: Thank you.

THE COURT: You opened the door so I'll give him a little – one question.

Go on.

MR. MOGILL: That's fine.

BY MR. MOGILL:

Q It's correct, is it not, Professor Allen, as you testified at pages 13 and 14 of your deposition that the consequence of engaging in homosexual acts quote, means eternal separation from God, in other words going to hell, unquote.

[134] A If it's not repented, yes.

MR. MOGILL: Nothing further.

* * *

REDIRECT EXAMINATION

BY MS. HEYSE:

* * *

[146] Q Thank you.

Doctor Allen, is there any dispute that both the United States Census and the Canadian Census data is limited?

A No dispute.

Q So, in fact, in using that data we don't know what's going on within households; correct?

A We're limited in what we know.

Q Okay. So isn't your dispute with Professor Rosenfeld just further evidence that this area is unsettled?

[147] A It's unsettled, that's right. There's some evidence that's there's a difference, but it's still at the very beginning of the process.

MS. HEYSE: I have no further questions, your Honor.

* * *